Neutral Citation Number: [2024] EWHC 1032 (TCC)

Claim No. HT-2024-000047

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 2nd May 2024

Before:

ADRIAN WILLIAMSON KC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between:

MCLAUGHLIN & HARVEY LIMITED	**Claimant**
- and -	
LJJ LIMITED	**Defendant**

- -
- -

Felicity Dynes (instructed by **Fenwick Elliott LLP**) for the **Claimant**
Crispin Winser KC (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Defendant**

Hearing date: 23rd April 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on Thursday 02 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Adrian Williamson KC:

1. The Claimant (MHL) seeks summary judgment to enforce the decision of an Adjudicator dated 31st October 2023 (the Decision), whereby it was directed that the Defendant (LJJ) was required to pay the sum of £808,000 within 7 days of the date of the Decision.

2. As to this, LJJ take four main points in resisting enforcement:

    a. The Decision was superseded by a revised decision dated 4th November 2023 (the Revised Decision), with the result that the Decision cannot be enforced;

    b. Even if the Adjudicator erred in law in issuing the Revised Decision, this was an error within his jurisdiction, with which the Court should not interfere;

    c. MHL cannot approbate and reprobate the Decision;

    d. MHL cannot enforce the Revised Decision.

3. The background is that MHL is a large construction and civil engineering company. LJJ is a specialist mechanical and electrical contractor.

4. MHL was engaged by Shiying Property London Limited under a JCT 2016 Design and Build contract (as amended) for the fit out and refurbishment of a building known as Christchurch Court, Paternoster Square, London.

5. MHL engaged LJJ to carry out the MEP installations pursuant to an amended JCT 2016 Design and Build Sub-Contract dated 7 May 2021 (the Sub-Contract). The Sub-Contract Sum was c.£17m.

6. There have been a total of five adjudications between the parties in respect of the Sub-Contract. All but one took place before the present Adjudicator. None of the Decisions have been the subject of any substantive challenge by either party. As such all five decisions are binding on the parties. The present proceedings concern Adjudication 5.

The relevant facts

7. On 12th September 2023, MHL issued an Adjudication Notice in Adjudication 5. This sought, inter alia, "a decision and direction that LJJ are to pay or allow Key Date Damages arising from LJJ's failure to meet the Sub-Contract Key Dates in the sum of £1,160,000 or such other sum as the Adjudicator might determine, such sum to be paid forthwith."

8. Following numerous exchanges, the Adjudicator issued the Decision on 31st October 2023. He decided that LJJ were to pay Key Date Damages arising from LJJ's failure to meet the Sub-Contract Key Dates in the sum of £808,000, this sum to be paid within 7 days.

9. In a covering email of the same date, the Adjudicator asked the parties to notify him of any "clerical or typographical errors". This innocent enough request was to produce a considerable volume of correspondence.

10. On 2nd November 2023 LJJ's then solicitors wrote to the Adjudicator in the following terms, with emphasis added:

> "*We acknowledge receipt of your decision dated 31 October and your request for correction of clerical errors.*
>
> *LJJ's submissions in this regard are set out below, entirely without prejudice to LJJ's submissions as to jurisdiction and subject to a reservation of rights to raise additional points as to jurisdiction and/or natural justice and/or the validity of the decision.*
>
> *…*
>
> *2... The final sentence of paragraph 84 is also factually incorrect. MHL's valuation of AfP 18 was issued on 8 November 2022, well before the decision in Adjudication 2 (5 March 2023). MHL's valuation of AfP 19 dated 8 December 2022 (copy attached) contained a deduction of Key Date damages of £954,285.71. It is therefore wrong to say that the PLN issued the month after AFP18 did not deduct Key Date damages. It is also wrong to say that Valuation 17 was superseded – MHL clearly carried forward their claim for Key Date damages and LJJ maintains that the Decision should reflect the benefit that MHL have already extracted from Decision 2 and exercised their right to make deductions from LJJ's valuations.*
>
> *It is understood that paragraph 84 is based on MHL's submission from paragraph 41 of the Reply. The Adjudicator's LOI did not request submissions from LJJ on this specific point in response, which is why LJJ are replying to this point now. In the interests of natural justice, it is submitted that the Adjudicator should take this into account for the purposes of his amended decision. Clarity on this point is essential, particularly given that LJJ may refer a dispute regarding Valuation 19 to adjudication…*"

11. It is immediately apparent that this communication went well beyond the correction of clerical or typographical errors. These comments were properly characterised as "submissions" on matters of fact.

12. The Adjudicator responded on the same day asking for MHL's comments by 11am on 3rd November 2023. At 10:04 on 3 November 2023, MHL's solicitors wrote to the Adjudicator objecting to LJJ's submissions on the basis that they did not advise of clerical or typographical errors and were not in any event agreed. They invited the Adjudicator to disregard them.

13. At 11:19 on 3rd November 2023, LJJ's solicitors wrote again to the Adjudicator in the following terms, which are also properly to be characterised as "submissions" on matters of fact (or, possibly, law):

> "*MHL's position should be considered particularly in the context of paragraph 2 of our submissions below. Clause 2.3B.2 provides that the "Sub-Contractor agrees to pay or allow to the Contractor such…amount" [of Key Date damages]. We understand that you are alive to this distinction because of your reference to MHL's*

> *valuation of AfP 18. You now have evidence confirming that MHL deducted Key Date damages in their valuation of AfP 19 and that, critically, the sum deducted (or allowed) in that valuation was greater than the sum considered to be due in Adjudication 5.*
>
> *If the Decision was not corrected, LJJ would be required to both pay and allow Key Date damages, which is clearly wrong. As a matter of arithmetic, the sum allowed (£954,285.71) should be deducted from the sum decided as due.*"

14. On 4th November 2023 at 12:31, the Adjudicator responded to LJJ's comments as follows, emphasis as original:

> "*Paragraph 3 (third and four paragraphs)* [sic: in context this must be a reference to numbered paragraph 2, third and fourth internal paragraphs] *These are observations/ submissions concerned with reasoning, not an application for a correction. I concluded that Interim Application 17 and its Payless Notice were superseded by Interim Application 18, merely noting, correctly, that "MHL says" that no Key Date damages were deduced in respect of Interim Application….*
>
> *However, to recognise the possibly that MHL's submission may not be correct, a matter which my Decision did consider, it not being the intention to award double recovery, an intention not clearly reflected in the wording of the Decision, I consider that the last sentence of paragraph 138 should be amended to read: "I have so stated ordering that, if not already allowed, as envisaged in paragraph 69 of the LoI on which neither party commented, ~~that~~ the said sum be paid by LJJ to MHL within seven days of the date of this Decision together with such VAT, if any, as is applicable thereon in law. Paragraph 2 of the Operative part to be corrected to read; "If not already allowed, the said sum of £808,000.00 to be paid by LJJ to MHL within seven days of the date of this Decision together with such VAT, if any, as is applicable thereon in law.*"

15. The Adjudicator asked for the parties to provide any comments on the drafting of the amendments/corrections he proposed to make by 5pm that day. This provoked further correspondence, in which MHL's solicitors contended that the proposed amendments fell outside the scope of the correction of clerical or typographical errors. LJJ's solicitors argued to the contrary.

16. However, the Adjudicator incorporated his proposed changes and issued the Revised Decision later on 4th November 2023. The covering letter stated:

> "*Whilst I note McLH's concern that the corrections I have made to paragraph 138 of the Reasons and paragraph 2 of the Operative Part fall outside of the scope of paragraph 22A of the 2011 Scheme, I remain of the view that those corrections are within that power for the reasons stated in my email of earlier today. Indeed, as LJJ submits, these corrections have similarities to those that the court in Bloor Construction (UK) Ltd v Bowmer & Kirkland (London) Ltd [2000] BLR 314 considered were within an Adjudicator's power; albeit in that case under an implied slip rule.*

> *The question of whether Key Date damages of at least the amount referred to those two corrected paragraphs has been allowed is not addressed in the corrected Decision.*
>
> *That is for the parties to consider given that, as noted in my email of earlier today, the Decision does not determine whether such damages were deducted by the Payless Notice responding to LJJ's Application which I concluded in my Decision superseded those which Decision No.2 concerned.*"

A. Did the Revised Decision supersede the Decision?

17. It was common ground at the hearing before me that:

    a. The power to revise a decision is to be found in the Scheme for Construction Contracts 1998, which provides at paragraph 22A (1):

    > "*The adjudicator may on his own initiative or on the application of a party correct his decision so as to remove a clerical error or typographical error arising by accident or omission.*"

    b. There were here no relevant typographical errors.

18. Did the Revised Decision consist of the correction of "a clerical error"? The OED provides the following assistance in relation to the word "clerical":

> "*Of or pertaining to a clerk or penman (see clerk n. 5), of clerks; esp. in clerical error, an error made in writing anything out.*
> *1798*
> *The syllable 'out' being omitted through a clerical mistake in the person who drew the will.*
> *E. H. Bay, Rep. Cases Superior Courts S.-Carolina 80Citation details for E. H. Bay, Rep. Cases Superior Courts S.-Carolina*".

19. The wording of paragraph 22A (1) was considered by Mr Roger ter Haar KC sitting as a Deputy High Court Judge in Axis M&E UK Limited v Multiplex Construction Europe Limited [2019] EWHC 169 (TCC), with emphasis supplied:

> "*29. In NKT Cables A/S v SP Power Systems Ltd [2017] CSOH 38 in the Outer House of the Court of Session, Lady Wolffe considered a case in which it was argued that a provision equivalent to the statutory slip rule should be implied. This led her to consider the effects of a slip rule in those terms. At paragraphs [93] and [94] she said (emphasis in the original):*
>
> *[93] What is the scope of the slip rule? Looking at regulation 22A of the Scheme as the likely formulation of the slip rule to be implied, the scope of the rule is relatively narrow: it enables the adjudicator "to correct his decision so as to remove a clerical or typographical error arising by accident or omission". Three features of this call for comment.* ***First, the rule is not directed to pure omissions, ie something that an adjudicator meant to do but by some oversight he forgot to do. Secondly, the slip is in the nature of a "clerical or typographical" error. This***

> ***betokens an error in expression or calculation of something contained within the decision, not an error going to the reason or intention forming the basis of that decision.*** *Such slips might include an arithmetical error in adding or subtracting sums, mis-transposing parties' names, a slip in carrying over a calculation from one part of the decision to another or, as here, the mistaken insertion of a rogue number.* ***Thirdly, it is this kind of slip (clerical or typographical) that is as a result of "accident or omission". This too, points to correction of slips or mistakes in expression, rather than changes to the reasoned or intended basis of the decision.*** *All three of these features are consistent with the observations in Bloor and the analysis of the cases referred to therein, about the slip rule essentially being confined to corrections of the adjudicator's "first thoughts and intention". Were the scope of the slip rule broader, ie to include corrections of pure omissions (as I have called them) or to give effect to second thoughts or intentions, it would have the potential seriously to undermine the interim finality which is a feature of adjudications under the Scheme.*
>
> *[94] While Bloor is a case about the implication of a term at common law, it seems to me that the scope of regulation 22A in the Scheme is entirely consistent with the discussion in that case, about the purpose and scope of a slip rule. If that is correct, the scope of the slip rule is confined to correcting a typographical or clerical error of something expressed within the four corners of the decision and which is apparent on the face of the decision. It is not warrant to correct what are more substantive errors, in the sense of a mistake of fact or law.* ***Nor, in my view, is it warrant to correct a pure omission, being something that the adjudicator intended to include or take account of but which he has wholly omitted in reaching his decision***."

20. It seems to me that a "clerical error" occurs where the (probably metaphorical nowadays) clerk or penman is given instructions by the author of a decision and writes them down wrongly.

21. That is not what happened here. There was no clerical error in the Decision. Rather, following further submissions which went far beyond the scope of paragraph 22A (1), the Adjudicator concluded that there was a matter of substance which he had not adequately addressed in the Decision. That may or may not be so, but that is not something which the Adjudicator is empowered to "correct" under paragraph 22A (1). In reality, the further submissions from LJJ had prompted the Adjudicator to add words in relation to something that the Adjudicator possibly intended to include or take account of but which he had omitted in reaching his decision.

22. I therefore conclude that LLJ's first ground of resistance fails.

B. Was the Adjudicator's error within jurisdiction, such that the court will not interfere?

23. This is a more difficult point. It is clear that the Adjudicator was alerted to the limitations of his powers under paragraph 22A (1), but he nonetheless concluded that he was entitled to issue the Revised Decision.

24. What is the legal effect of his so proceeding?

25. The starting point, in my judgment, is the decision of the House of Lords in Lesotho Highlands Development Authority v Impregilo SpA [2006] 1 A.C. 221.

26. In that case, their Lordships were concerned with two provisions of the (then quite new) Arbitration Act 1996.

27. Section 48 provided that:

> "*(1) The parties are free to agree on the powers exercisable by the arbitral tribunal as regards remedies.*
> *(2) Unless otherwise agreed by the parties, the tribunal has the following powers….*
> *(4) The tribunal may order the payment of a sum of money, in any currency…*"

28. Section 68 dealt with challenges to an Award, as follows, so far as material:

> "*(1)A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award…*
> *(2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant—*
> *…(b)the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67) …*"

29. In Lesotho, the facts were that a public authority in the Kingdom of Lesotho had engaged the contractors, a consortium of seven companies from various countries, to construct a dam in Lesotho. The law of the contract was stated to be that of the Kingdom of Lesotho and the currency of account was to be Maloti, with provision for payments to be converted into the contractors' currencies at the exchange rates applicable on a specified date. The project was successfully completed but a dispute arose in respect of claims by the contractors for reimbursement of increased costs. The employers rejected the claims and they were referred to ICC arbitration in London. The arbitrators decided that sums totalling 18.9m Maloti should have been paid by the employer. However, between the date when the payments should have been made and the date of the award the value of the Maloti had fallen heavily and the arbitrators, in purported reliance on their power under section 48(4) of the 1996 Act, ordered payment in the contractors' own currencies converted from Maloti at the rate prescribed in the contract, which pre-dated the Maloti's collapse. The judge held that the arbitrators had exceeded their powers by expressing the award in currencies other than those stipulated in the contract. The Court of Appeal upheld the judge's decision.

30. The House of Lords held that there had been no excess of power under section 68(2)(b) of the 1996 Act. Lord Steyn gave the leading speech as follows, with emphasis added:

> "*23. Contrary to the view I have expressed, I will now assume that the tribunal committed an error of law. That error of law could have taken more than one form. The judge ([2003] 1 All ER (Comm) 22, para 25) and the Court of Appeal ([2004] 1 All ER (Comm) 97, para 35) approached the matter on the basis that the tribunal*

> *erred in the interpretation of the underlying contract. Another possibility is that the tribunal misinterpreted its powers, under section 48(4) to express the award in any currency. Let me approach the matter on the basis that there was a mistake by the tribunal in one of these forms. Whichever is the case, the highest the case can be put is that the tribunal committed an error of law.*
> *24. But the issue was whether the tribunal "exceeded its powers" within the meaning of section 68(2)(b).* ***This required the courts below to address the question whether the tribunal purported to exercise a power which it did not have or whether it erroneously exercised a power that it did have. If it is merely a case of erroneous exercise of power vesting in the tribunal no excess of power under section 68(2)(b) is involved.*** *Once the matter is approached correctly, it is clear that at the highest in the present case, on the currency point, there was no more than an erroneous exercise of the power available under section 48(4). The jurisdictional challenge must therefore fail…*
> *32. In order to decide whether section 68(2)(b) is engaged it will be necessary to focus intensely on the particular power under an arbitration agreement, the terms of reference, or the 1996 Act which is involved, judged in all the circumstances of the case. In making this general observation it must always be borne in mind that the erroneous exercise of an available power cannot by itself amount to an excess of power. A mere error of law will not amount to an excess of power under section 68(2)(b).*
> *33. For these reasons the Court of Appeal erred in concluding that the tribunal exceeded its powers on the currency point. If the tribunal erred in any way, it was an error within its power.*"

31. This point was considered in the adjudication context by Ramsey, J in O'Donnell Developments Limited v Build Ability Limited [2009] EWHC 3388 (TCC).

32. It may be helpful to set out a substantial portion of that judgment, with emphasis added:

> "*The Threshold Question*
> *29. On this application for summary judgment there is a threshold question as to how far the court can interfere with an adjudicator's exercise of his power under the slip rule. If an adjudicator has jurisdiction under the slip rule, to what extent can the court review the exercise of that jurisdiction by the adjudicator? This question did not arise in Bloor and was not argued in YCMS.*
> *30. Mr. Lofthouse QC submits that the court needs to be satisfied that a slip, properly so defined, has occurred. If there is no slip then the adjudicator does not have jurisdiction. He submits that the position may be different if there was an express power to correct slips.*
> *31. He also referred me to paragraph 2.118 of Coulson on Construction Adjudication where, referring to the decision in Bloor and its effect on the principle in Bouygues, he says that the two decisions can be reconciled and adds:*
>
> > *"If the parties are in dispute as to the obviousness (or otherwise) of the alleged 'slip', or the adjudicator does not accept that an error has been made, or does accept it but only some time after the publication of the decision, then it is thought that the approach in Bouygues will remain appropriate."*
>
> *32. Mr Lofthouse submitted that it was only if the parties, in effect, agreed on the slip that the slip rule could be applied. I do not think that the passage cited*

expresses that view. What it is stating is that if the parties agree or the adjudicator decides that there has been a slip and does so within time, then the slip can be corrected. If that does not happen then in the circumstances set out in the passage cited, the position remains that there is an enforceable decision as set out in Bouygues.

33. Ms. Finola O'Farrell QC, on behalf of ODD, refers to the decision of the House of Lords in Lesotho Highlands Development Authority v Impregilo SpA [2006] 1 AC 221 which was cited by the court in argument. She submits that it is authority for the proposition that an erroneous exercise of a power does not constitute an act in excess of powers so as to fall outside of the jurisdiction of the adjudicator. She refers to the following passage from Mustill & Boyd on Commercial Arbitration, cited with approval by Lord Steyn at [25]:

> *"if… [the arbitrator] applies the correct remedy, but does so in an incorrect way - for example by miscalculating the damages which the submission empowers him to award - then there is no excess of jurisdiction. An error, however gross, in the exercise of his powers does not take an arbitrator outside his jurisdiction and this is so whether his decision is on a matter of substance or procedure."*

34. She submits that, as set out by Lord Steyn at [31] and [32], the concept of a tribunal exceeding its powers necessarily assumes that the tribunal was acting within its substantial jurisdiction.

35. I accept her submission that an erroneous exercise of a power does not fall outside the jurisdiction of an arbitrator or adjudicator. However, the distinction between disputes as to the jurisdiction of an adjudicator and disputes as to ways in which that jurisdiction should be exercised is not an easy one to draw as the decision in Lesotho Highlands shows. This can be illustrated in the case of the slip rule as follows. First if the adjudicator were to exercise a slip rule when there was no express or implied slip rule, that would clearly be a decision which was outside his jurisdiction. ***Secondly, if the adjudicator is asked by one party to correct a slip and he accepts that an error has been made within the slip rule then if the adjudicator makes an error of fact or law in so doing, I consider that such an error does not take the exercise of the slip rule outside his jurisdiction.*** *Finally, if the adjudicator is asked by one party to correct a slip which the other party agrees is a slip within the slip rule but in operating the slip rule he makes and error of fact or law, then I do not consider that the court can interfere in that decision.*

36. ***The dividing line between exercising a wrong jurisdiction which does not exist and exercising a jurisdiction which does exist, wrongly is difficult. Each case obviously has to be considered on its facts to decide whether it is a decision within or outside the adjudicator's jurisdiction.***

37. As Dyson J said in Bouygues at [36]:

> *"…in deciding whether the adjudicator has decided the wrong question rather than given a wrong answer to the right question, the court should bear in mind that the speedy nature of the adjudication process means that mistakes will inevitably occur, and, in my view, it should guard against characterising a mistaken answer to an issue that lies within the scope of the reference as excess of jurisdiction."*

38. In considering whether the adjudicator was acting within his jurisdiction in operating the slip rule the court should similarly guard against characterising a mistaken application of the slip rule as a decision in excess of, and therefore, outside his jurisdiction.

> *39. In the present case it is accepted by BAL that the slip rule is an implied term of the Sub-Contract. The Adjudicator was asked to correct a slip and accepted that he had made an error within the slip rule. In such circumstances I do not consider that the court can or should interfere with the exercise of the adjudicator's powers within his jurisdiction. To do so would be to seek to interfere in a case where he has answered the right question and like Bouygues his decision will be temporarily binding, whether he was right or wrong in the answer he gave.*
> *40. If I am wrong about that and the court can interfere in the decision then I have to consider the merits of the dispute.*
> *Review of the exercise of the slip rule…*
> *54. I consider that the Adjudicator was correct to identify the mistake as an "inadvertent slip" because he made a deduction which he had not intended to make. Such slips are often, to some extent, contributed to by information provided by the parties or the way in which that information is provided. I do not consider that this prevents an adjudicator from operating the slip rule if he concludes that what he has done is not what he intended. In this case both parties had provided the Adjudicator with similar figures.* ***This is not a case of the Adjudicator giving effect to second thoughts or intentions but of giving proper effect to his first thoughts.***
> *55. In those circumstances, the Adjudicator applied the slip rule to correct an accidental error and BAL has no real prospect of successfully defending ODD's claim for sums due under corrected Decision 8A. On the basis that BAL has paid all other sums due on Decisions 8A and 9, ODD is therefore entitled to summary Judgment for £148,468.67.*"

33. In this case, LJJ rely upon the highlighted passage in paragraph 35 of the Judgment. They submit that the Adjudicator was asked by them to correct a slip and accepted that an error had been made within the slip rule. Even if he was wrong about that, this did not take the exercise of the slip rule outside his jurisdiction. The court should not interfere.

34. I do not agree, for the following reasons:

    a. The passage in the judgment relied upon by LJJ is, on analysis, *obiter* given the findings made on the facts;

    b. This exercise must always be fact sensitive. Whatever may have been the case on the facts of O'Donnell, I have concluded that the Adjudicator in the present case was not exercising a power which he had, namely to correct clerical or typographical errors. Rather, in the light of further submissions on the facts, he was qualifying or clarifying his decision. That is not a power which the Adjudicator enjoys;

    c. Furthermore, if the Adjudicator did have such powers, then in every adjudication the issue of a decision would not represent the end of the process, but merely herald further rounds of submissions from the losing party or, perhaps, both parties. That is certainly not the intention of the Housing Grants, Construction and Regeneration Act 1996 (as amended) or the Scheme.

35. For these reasons, I have concluded that O'Donnell does not bind me to any particular approach to the facts of the present case. It is clear from O'Donnell that "the dividing

line between exercising a wrong jurisdiction which does not exist and exercising a jurisdiction which does exist, wrongly is difficult. Each case obviously has to be considered on its facts to decide whether it is a decision within or outside the adjudicator's jurisdiction."

36. In the present case, I am satisfied, particularly having regard to the Adjudicator's email of 4th November 2023 at 12:31 that the Adjudicator's approach in the present case fell the wrong side of the line. In particular, the addition of the words "if not already allowed" served to convert a straightforward determination that a sum of money should be paid within seven days by LJJ into a mere declaration that a sum was due, subject to an investigation of other transactions between the parties.

37. I am, of course, bound by the decision in Lesotho. That obliges me to "focus intensely on the particular power". The power in question was "to remove a clerical error or typographical error arising by accident or omission". On a correct analysis of what the Adjudicator did here, this was not "merely a case of erroneous exercise of power vesting in the tribunal" but, rather, the purported exercise of a power which the Adjudicator did not have, namely "giving effect to second thoughts or intentions".

38. Finally, on this aspect, it should be noted that the Adjudicator did not attempt to change paragraph 84 of the Decision, the last sentence of which provides that:

> "*In any case that Application [17] and the corresponding Payless Notice were superseded by Interim Application 18, and the related Payless Notice of the following month in which [the Claimant] says, no Key Date Damages were deducted.*"

39. It was this finding which was the subject of a substantial part of the further submissions of LJJ. Despite the proposed inclusion of the words "if not already allowed" in paragraphs 2 (Operative) and 138 (Reasons), no change was suggested by the Adjudicator for this paragraph. This reinforces my conclusion that the Adjudicator was here seeking to clarify or qualify his decision, i.e. to exercise a power which he did not have. He was not, in truth, attempting to remove a clerical error or typographical error arising by accident or omission, the power which he did have.

C. Approbation and reprobation

40. This point was somewhat faintly argued by Mr Winser KC on behalf of LJJ and did not loom large in his skeleton argument.

41. It is of course right that the doctrine of election prevents a party from "blowing hot and cold" in relation to an adjudicator's decision: see, for example, the judgment of Dyson J, as he then was, in Macob Civil Engineering Limited v Morrison Construction Limited (1999) BLR 93 at 99.

42. However, and contrary to the submissions of LJJ, I do not think that MHL, by proffering (legitimate and minor) corrections of their own in response to the invitation of the Adjudicator, are thereby in some way prevented from relying upon the uncorrected, original Decision for the purposes of enforcement.

D. Enforcing the Revised Decision

43. In the light of my conclusions above, this issue does not arise.

Conclusions

44. For these reasons, I have concluded that MHL are entitled to summary judgment to enforce the Decision of the Adjudicator dated 31st October 2023, in the sum of £808,000.

45. As was observed by Mr ter Haar KC in paragraph 35 of the judgment in Axis, "it is clear from the authorities that I should start from the position that decisions of adjudicators are to be enforced save in very exceptional cases". In this case, the Decision required LJJ to pay £808,000 to MHL within seven days and this court should give effect to that determination.

46. Of course – and I make no observations about this – it may be that LJJ are right to say that they have already "allowed" this sum in favour of MHL. But that is a matter which can be pursued through the mechanism of the Sub-Contract or arbitration or further adjudications. It is not a ground for resisting the enforcement of Adjudication 5.

47. I invite Counsel, for whose helpful submissions I am much indebted, to seek to agree any consequential matters, failing which a short remote hearing will be convened.