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1. Robert Heath Heating Ltd v Orbit Group Ltd [2024] EWHC 3039 (TCC) (27 November 2024), 2. Yeung v Jeckz Investment Ltd & Ors [2024] EWCA Civ 1413 (14 November 2024)

1. *Robert Heath Heating Ltd v Orbit Group Ltd* [2024] EWHC 3039 (TCC)

Date: 27 November 2024

Key Words:

Public Procurement, Public Contracts Regulations 2015, Automatic Suspension, Serious Issue to be Tried, Adequacy of Damages, Conflicts of Interest, Scoring Challenge, Early Specific Disclosure

Summary

In this procurement dispute, Robert Heath Heating Ltd (RHH) challenged Orbit Group Ltd's (OGL) decision to award domestic heating service contracts to Aaron Services Ltd. RHH alleged a conflict of interest due to a former OGL employee joining the successful bidder's parent company and contested the scoring of its tender. RHH sought early specific disclosure, while OGL applied to lift the automatic suspension triggered by the proceedings.

The court found serious issues to be tried regarding both the conflict of interest and tender scoring [68-70]. However, it ruled that damages would adequately compensate RHH if successful [75-77] and lifted the automatic suspension [83]. The court also ordered early specific disclosure, limited to documents related to the tender scoring and the alleged conflict of interest [100].

Key Themes:

1. ***Procurement Challenges:*** *The judgment addressed the legal framework under the Public Contracts Regulations 2015.*
2. ***Conflict of Interest:*** *Allegations arose from an employee moving between OGL and a bidder's parent company.*
3. ***Scoring Disputes:*** *RHH alleged lack of transparency and errors in the evaluation process.*
4. ***Automatic Suspension:*** *The court examined the suspension provision and its potential lifting.*
5. ***Early Specific Disclosure:*** *Principles for granting early specific disclosure in procurement cases were discussed.*

Background

Orbit Group Ltd (OGL), a social housing provider, conducted a procurement for domestic and commercial heating services. RHH, an unsuccessful bidder, alleged breaches of the Public Contracts Regulations 2015 [14]. Contracts were awarded to Aaron Services Ltd [5].

Legal Issues and Analysis

a) Automatic Suspension

RHH's claim triggered the automatic suspension under Regulation 95 of the Public Contracts Regulations 2015, preventing OGL from entering contracts with Aaron [37]. OGL applied to lift the suspension [1(1)].

The court applied the well-established American Cyanamid test, considering the following factors [39]:

1. Serious Issue to be Tried

The court assessed whether RHH's claim was frivolous or vexatious [40]. It found serious issues to be tried regarding:

- **Conflict of Interest:** Evidence showed that Ms. Nicklin, a former OGL employee involved in the procurement, later joined Sureserve Group (Aaron's parent company) and had previously indicated Sureserve Group was likely to win the contract [18, 56, 57(10.e & f)].
- **Scoring Challenge:** The court also found a serious issue to be tried [67,68], noting that the Particulars of Claim set out a detailed case which was not frivolous or vexatious. The court also had regard to the fact that disclosure had not yet been given [67,84,100].

2. Adequacy of Damages

The court then considered whether damages would be an adequate remedy for RHH if it succeeded at trial [69].

The court noted that RHH was a substantial company and part of a substantial group [4]. The court concluded that damages would be an adequate remedy, even if assessing those damages would involve uncertainties and variables [79-81].

3. Lifting the Suspension

Having found that there was a serious issue to be tried, but that damages would be an adequate remedy, the court concluded that the automatic suspension should be lifted [81-83].

b) Early Specific Disclosure

RHH also applied for an order for early specific disclosure [84]. RHH sought disclosure of various categories of documents, including evaluation notes, moderation notes, and documents relating to conflicts of interest [85].

The court noted that the court would generally order early specific disclosure in procurement cases where a prima facie case had been made out [87]. The court would be cautious about ordering such disclosure if the applicant appeared to have no grounds for challenging the procurement process [87]. The court would also want to be satisfied that the reasons given by the defendant for its decision were inadequate [88].

The court found that RHH had established a prima facie case [91]. The court also found that the disclosure sought by RHH was relevant to the scoring challenge and to the alleged conflict of interest

[96]. Therefore, the court ordered early specific disclosure of a limited category of documents [100].

Conclusion

The court found a serious issue to be tried but determined that damages would adequately compensate RHH. As a result, the automatic suspension was lifted. The court also ordered early specific disclosure, limited to documents on the scoring of RHH's tender and the alleged conflict of interest.

Key Takeaway:

This judgment provides helpful guidance on the application of the American Cyanamid test in procurement cases. The judgment also provides an example of a situation in which the court will order early specific disclosure, even where the defendant has given reasons for its decision. In such cases, the court will examine whether the applicant has a prima facie case and whether the disclosure sought is necessary for the applicant to plead its case properly.

Parting Thoughts

In the end, Robert Heath Heating Ltd v Orbit Group Ltd *delivers the judicial equivalent of a raised eyebrow and a slow, deliberate sip of tea. Yes, there's a serious issue to be tried—two, in fact. A potentially conflicted former employee drifting into a competitor like a plot twist in a mid-tier office drama? That'll do. Scoring complaints backed by opaque reasoning and withheld disclosure? Yes, that too. But does any of it mean RHH gets to freeze the entire procurement while the court irons out the details? Absolutely not.*

This is the fine balance the judgment strikes: recognising the gravity of the allegations without letting them hold the process hostage. Damages, the court reasoned, are an entirely adequate balm—even if assessing them may involve more imagination than a fantasy football draft. RHH is a sizable player, backed by a multinational parent with the sort of balance sheet that wouldn't flinch at a seven-year contract loss. And reputation damage? Hard to quantify, even harder to prove, and—on this evidence—not exactly searing.

Still, the court wasn't unsympathetic. Early specific disclosure was ordered—narrowly tailored, of course, to stop things devolving into a fishing expedition with legal robes. The lesson for contracting authorities is a clear one: even where your paperwork is pristine, perceived conflicts of interest can cast long shadows. Best to close the loop early—because, as here, when procurement gets procedural, the only certainty is that someone's legal department won't be having an early night.

The net effect? The automatic suspension is lifted, the disclosure curtain is drawn back just a little, and the substantive issues go forward—calmly, rationally, and with just the faintest hint of litigation theatre. The judgment's real triumph lies in its pragmatism: a steady hand steering through allegations of impropriety without allowing procedural ambushes to derail the commercial ship. Justice, yes—but no melodrama.

2. *Yeung v Jeckz Investment Ltd & Ors* [2024] EWCA Civ 1413

Date: 14 November 2024

Key Words:

Summary Judgment, Undue Influence, Personal Guarantees, Separate Proceedings, Admissions, Amendments to Pleadings, Realistic Prospect of Success, Evidence

Summary

The Court of Appeal upheld summary judgment in favour of the Respondents, who had lent £700,000 to 888 OK Limited for property development. The Appellant, the company's principal director, had provided personal guarantees for the loans. Despite initiating separate undue influence proceedings in the Chancery Division, the court found this defence lacked a realistic prospect of success and did not bar summary judgment.

Key Themes:

1. *Summary Judgment Principles*
2. *Procedural Considerations of Separate Claims*
3. *Undue Influence in Commercial Contexts*
4. *Significance of Admissions and Amendments to Pleadings*
5. *Evaluation of Evidence and Prospects of Success*

Background

The Respondents sued the Appellant under personal guarantees after lending to the company. The Appellant initially defended on grounds that the loan's redemption date had been extended to the date of the property sale [6,7]. However, after the property was sold, the Appellant commenced separate Part 8 proceedings in the Chancery Division, alleging undue influence rendered the personal guarantees invalid [7,8]. The Respondents applied for summary judgment, which was granted by the judge [9,10].

Legal Issues and Analysis

The primary issue was whether granting summary judgment was correct, given the separate undue influence claim. The court found:

- The existence of separate proceedings did not preclude summary judgment [22].
- The undue influence claim lacked a realistic prospect of success [24, 25], with allegations of bullying and pressurisation deemed vague and unsupported by evidence [19-21, 27].
- No evidence showed the Appellant lacked legal advice or that guarantees were backdated [29-31].
- The Appellant's admission that the guarantees were valid (dated 20 July 2017) made amending the defence difficult, especially given delays in raising the undue influence claim [33, 35-36].

Conclusion

The Court of Appeal dismissed the appeal, affirming summary judgment for the Respondents [41]. It found the undue influence defence implausible and concluded the judge was correct in granting summary judgment.

Key Takeaway:

Raising a separate claim in another court does not prevent summary judgment. The court evaluates the defence's prospects of success, as seen here, where the undue influence claim was deemed weak and implausible. The judgment also highlights the importance of admissions in pleadings and the challenges of later amending them.

Ratio Decidendi & Obiter Dicta:

Ratio:

1. Raising a separate claim in another court does not automatically bar summary judgment in ongoing proceedings [22-24]. The court evaluates whether the defence has a realistic prospect of success, regardless of where it is raised [23, 24].
2. A defence is not accepted at face value; evidence supporting it must withstand scrutiny. In this case, the appellant's allegations of undue influence were vague, lacked detail, and were unsupported by contemporaneous evidence [20, 24, 25, 28].
3. Admissions in pleadings carry significant weight, and resiling from them is challenging. The appellant's initial defence assumed the validity of the personal guarantees, undermining later attempts to challenge them based on undue influence [35, 36].

Obiter:

1. The court criticised the appellant's decision to initiate separate proceedings in another division and city, describing it as a "procedural tangle" [11].
2. The appellant's silence on the property sale, which invalidated his initial defence, raised doubts about the good faith of the undue influence claim [7, 8, 32].
3. The court dismissed the relevance of undisclosed evidence, such as the VAT invoice, emphasising that presenting a plausible case is the appellant's responsibility [38, 39].

Parting Thoughts

In Yeung v Jeckz, the Court of Appeal has done what it does best: carefully peeled back layers of vaguely-drafted pleadings, wishful thinking, and post-hoc litigation strategies, only to find—surprise—a thoroughly conventional commercial dispute dressed up as an epic tale of oppression and injustice.

Let’s be clear. Mr Yeung guaranteed a loan, signed on the dotted line (and, for good measure, on every page), and said nothing of undue influence until years later, when repayment inconveniently loomed. Instead of pleading the point in the very proceedings in which the guarantees were being enforced, he launched an entirely separate action in another division, in another city, as if hoping a change of scenery might improve the legal merits. It did not.

The Court, unbothered by theatrics, applied CPR Part 24 with the sort of ruthless efficiency that should be mandatory reading for any would-be defendant hoping to sidestep summary judgment with nothing more than vagueness, delay, and the phrase “I felt pressured.” The judgment reinforces that summary judgment isn’t just for the legally hopeless—it’s also for the evidentially vacant.

The Appellant’s case of undue influence, such as it was, amounted to being asked assertively to sign a document, not bothering to read it, and then realising—six years and one sold property later—that this was somehow all terribly unfair. The allegations were “thin to the point of invisibility,” the evidence barely visible even under forensic light, and the delay in raising them… Olympian.

So what does this case teach us? Personal guarantees aren’t optional suggestions. If you sign them, they mean something. And if you later decide to cry foul, you’d better do so promptly, persuasively, and in the right proceedings. Courts aren’t there to indulge litigation strategy games or revive defences long after they’ve expired of natural causes.

In short, if you want to avoid summary judgment, bring a defence with bones. Not one cobbled

together from afterthoughts, time machines, and indignation.

#RobertHeathHeating #OrbitGroup #HeathvOrbit #PublicProcurement #ProcurementLaw #ProcurementChallenge #ContractLaw #CaseLaw #AutomaticSuspension #AdequacyofDamages #ConflictsofInterest #ScoringChallenge #PublicContractsRegulations2015 #TCC #UKLaw #EnglishLaw #DamagesinProcurement #LossofChance #SummaryJudgment #UndueInfluence #PersonalGuarantees #CommercialLaw #ContractLaw #CourtOfAppeal #UKLaw #EnglishLaw #ProceduralTactic #AdmissionsInPleadings #LackOfEvidence #Yeung #JeckzInvestment #YeungvJeckzInvestment

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