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Who's responsible for finishing the drawings? Workman Properties Ltd v Adi Building And Refurbishment Ltd [2024] EWHC 2627 (TCC) (21 October 2024)

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Date: 21 October 2024

Summary

This case centres on a dispute over design responsibility in a construction project. Workman Properties Ltd (WPL) filed a Part 8 claim seeking a declaration on the interpretation of a JCT 2016 design and build contract, asserting that Adi Building and Refurbishment Ltd (ADI) was fully responsible for completing design work up to RIBA stage 4/4(i). ADI argued that the case was unsuitable for Part 8 due to factual disputes, contending that WPL warranted the design was complete to stage 4/4(i) and sought damages for incomplete work. The court ruled for WPL, affirming that the contract unambiguously assigned full design responsibility to ADI and denied ADI's claims for damages and additional time/costs.

Key Themes:

1. ***Contract Interpretation:*** *The judgment underscores the need for clear, unambiguous contract drafting and affirms that courts will prioritise the overall contract language over conflicting statements in individual documents.*
2. ***Design Responsibility in Design and Build Contracts:*** *This case confirms that contractors in design and build contracts generally bear full design responsibility, even if some design work was initially done by the employer.*
3. ***Suitability of Part 8 Proceedings:*** *The judgment addresses the proper use of Part 8 proceedings for contract interpretation, advising against suitability challenges based on irrelevant factual disputes and stressing the need for clearly identified disputed facts.*
4. ***Choice of Venue in TCC Cases:*** *The judgment emphasises selecting the right TCC venue to promote efficient case management and timely dispute resolution.*

Background

WPL and ADI entered into a JCT Design and Build Contract 2016 for an expansion project at

Cotteswold Dairy [48, 49]. After ADI raised a complaint, the first adjudication found that WPL warranted the design's completion to stage 4/4(i) [50-53]. WPL then filed this Part 8 claim seeking a declaration on design responsibility interpretation. ADI challenged the suitability of Part 8 proceedings, asserting WPL's liability for incomplete design [1]. ADI also initiated a second adjudication addressing valuation, extensions of time, and loss and expense claims, with a focus on design completion [57-59].

Legal Issues and Analysis

1. **Contractual Interpretation of Design Responsibility:** The court reviewed the contract documents, noting the Employer's Requirements' statement about design completion to stage 4/4(i). However, it ultimately prioritised other provisions that clearly assigned full design responsibility to ADI [56–121, 63-65, 90, 110-120].
2. **Scope of the 'Review' Obligation:** The court dismissed ADI's claim that its 'review' obligation in para.1.5 only applied to existing design information, clarifying it also required verification of the design's completeness [92-93].
3. **Relevance of Factual Disputes:** Examining ADI's assertion of factual disputes, the court found ADI did not identify specific relevant facts, stressing ADI's burden to clearly state such disputes to challenge Part 8 suitability [19-33].
4. **Impact of Previous Adjudication:** Addressing ADI's concerns, the court affirmed that the factual dispute over design completion was irrelevant to interpreting the contract, as it would not aid in resolving the legal issue [42-44].

Conclusion

The court ruled in favour of WPL, confirming that the contract placed full design responsibility on ADI. It declared ADI's obligation to complete design work up to RIBA stage 4/4(i) and clarified that WPL did not warrant design completeness. ADI's claims for damages and additional time/costs due to alleged incomplete design were denied.

Key Takeaway:

The judgment reinforces that:

1. *Clear and unambiguous contract language generally prevails in interpretation disputes [97-101].*
2. *Design and build contractors usually assume full design responsibility, even with pre-existing design work.*
3. *Parties should assess the suitability of Part 8 proceedings carefully and avoid irrelevant factual disputes that hinder legal resolution [31-33, 42-45].*
4. *Selecting the correct TCC venue is essential for efficient and timely case management.*

Ratio & Obiter:

Ratio:

1. **Contractual interpretation trumps general statements:** Although the Employer's Requirements noted that 'significant design has been developed to date…to RIBA Stage 4,' the contract's bespoke amendments clearly assigned full design responsibility, including all remaining work up to stage 4/4(i), to the defendant [73-74, 86, 88-89, 108-117].
2. **No express limitations on design responsibility:** No contract terms explicitly excluded

design work up to stage 4/4(i) from the defendant's obligations.

3. **Defendant's tender implied acceptance:** The defendant's tender, showing a 'thorough evaluation' of existing designs, implied acceptance of responsibility for their adequacy. 'Review' encompasses sufficiency verification: The defendant's duty to 'review' existing designs included verifying that all required design elements were present, not just identifying defects.
4. **Novation provided recourse:** Novation provisions enabled the defendant to enforce obligations against the original consultants for design completion [84-85, 121].

Obiter:

1. **Guidance on Part 8 suitability:** The judge highlighted the misuse of Part 8 proceedings and stressed the importance of clearly identifying disputed facts, providing valuable guidance for future cases.
2. **Rectification not adequately pleaded:** The judge found the defendant's hint at a rectification claim too vague to consider [34-35].
3. **Relevance of second adjudication:** The judge deemed the second adjudication award, based on Mr. Hough's decision, irrelevant to the issue of contractual interpretation [66-70].
4. **Venue selection:** The judge criticised the claimant's choice of venue (London) and underscored the need to choose the most suitable TCC location, considering the locations of parties and witnesses.

Parting Thoughts

In the battle of who's responsible for finishing the drawings, ADI found itself holding the pen—with Judge Stephen Davies wielding the red ink.

This was not just a ruling on contractual design responsibility—it was a reminder that courts do, in fact, read the contract. And when they do, they will not allow a conveniently ambiguous paragraph in the Employer's Requirements to overtake a panoply of bespoke clauses painstakingly allocating responsibility to the contractor. It turns out that if you sign up to a JCT Design and Build contract that's been aggressively amended to hand you the entire baby—design bathwater and all—you can't later complain that you weren't told how wet it was.

The real story here is not about design drawings but about the ghost of adjudication past. ADI won an early skirmish before an adjudicator who found, based on a charming bit of contractual optimism, that the Employer had warranted design completion. But when the full rigour of judicial scrutiny rolled in, that optimistic bubble popped faster than a developer's sustainability clause in a value-engineered budget.

Judge Davies' judgment is a masterclass in contractual interpretation. He dismantled the "design was complete" argument with surgical precision, reminding us all that vague wording in preambles does not override express, unambiguous obligations—especially when they appear in bold, bespoke amendments shouting "YOU ARE FULLY RESPONSIBLE FOR THE DESIGN."

As for ADI's attempt to reclassify this tidy legal question into a mess of factual disputes: it failed to identify any actual facts that mattered. The case became a cautionary tale in procedural overengineering. The judge even had to pause to point out that issuing a Part 8 claim in London, when the entire cast lives and works in the Midlands, was about as efficient as sending a teabag by registered post.

In short, if you agree to complete the design under a D&B contract, don't expect the court to draw your lines for you. And if you're going to argue the contract means something other than what it says—bring more than your hopes, your highlighters, and an adjudicator's warm memory.

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