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## LEGAL BRIEFING

### *ROK Build Limited v Harris Wharf Development Company Limited*

TCC HHJ Wilcox [2006] EWHC 3573

#### ***The Facts***

The claimant was constructing a primary school and 24 one to three bedroom flats for Harris Wharf. The contract was the JCT Standard Form of Building Contract, With Contractor's Design 1998 Edition.

Practical Completion occurred on 12 July 2005, and the professional advisers met in April 2006 in order to discuss the final account. ROK made an application for payment on 29 June 2006 for the sum of £940,927. On 20 July 2006 the employer's agent acknowledged the interim application, but stated that they did not consider that any further money was to be paid to the contractor. As a payment notice this letter was ineffective as it was out of time under clause 30.3.3, but had some effect under clause 30.3.5 in respect of withholding. The matter was referred to adjudication and the adjudicator decided that the claimant should be paid the sum of £940,927.

#### ***The Issues***

The defendant refused to pay on a variety of grounds. The central one related to the identity of the claimant. The contractor identified in the contract was Walter Llewellyn & Sons Limited. Llewellyn & Sons Limited is wholly owned by Llewellyn Management Services Limited whose ultimate owner is ROK Plc. In the Notice of Intention to Refer the claimant described itself as "ROK Build Limited trading as Llewellyn". During the course of the works, notices were served to ROK Build Limited and substantial payments were paid to ROK Build Limited.

The adjudicator had to deal with the issue as to the identity of the parties in order to come to a decision. He concluded that the referring party was ROK Build.

#### ***The Decision***

HHJ Wilcox held that the defendant did not give its consent to allow the adjudicator to finally determine the issue as to the identity of the party. An adjudicator would not have jurisdiction to finally determine such an issue. As there was no evidence of an assignment between the respective ROK companies, the correct claimant should have been ROK Plc and so the adjudication had been started by the wrong company. The claimant did not have a right to commence the adjudication nor to enforce the adjudicator's decision. The claimant was therefore not entitled to summary judgment.

#### ***Comment***

This case reminds us that an adjudicator only has power to make a decision where the adjudicator properly has jurisdiction. In this case the correct party should have been ROK Plc, but as the adjudication had been commenced by ROK Build Limited the adjudicator had no jurisdiction. That party was not a party to the contract, so had no power to commence the adjudication.

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This case also serves, therefore, as a reminder to ensure that the correct parties are identified on the Notice of Adjudication. This may sound obvious, but in the construction industry where groups of companies operate, and company names change or consolidation of companies within a group takes place, great care will often be needed.

***Nicholas Gould***  
***November 2007***