



CHARTERED QUANTITY SURVEYORS CHARTERED BUILDING CONSULTANCY

DISPUTE RESOLUTION SPECIALISTS. CONTRACTUAL ADVISORS. EXPERT WITNESS

Newsletter No 8 – September 2006

Summer has gone for yet another year and with it those glorious sunny days and balmy temperatures. For most of us, our summer holiday seems like a lifetime away already. The traffic has got heavy again now the schools are back, the evenings are getting darker earlier and Christmas is looming.

Business Development

The RJC team welcome aboard Bano Nazir, who replaced Sharon Ackroyd as our Slough Secretary in June.

RJC is taking advantage of the relatively new free global telephone and video conference calling service SKYPE. We believe that this has a huge potential to enable us to offer clients a more cost effective service via the video conferencing facility, which can save unnecessary costs of meetings as well as freeing up valuable time.

Marketing

In May RJC had the pleasure of hosting another evening at the races, this time at Newbury. The event was well attended and provided an opportunity for Clients and the RJC team to meet away from the usual environment and pressure of work. Although the action on the course was exciting we have to report that there were no big winners amongst us.

Dispute Resolution Update

By Ray Crabbe

The summer sees RJC involved in several Arbitrations, Expert work and the usual run of claims/negotiations and Adjudications.

Arbitration has not been the first choice of parties to standard forms of contract for some years so what has changed? I suspect, the limitations of Adjudication are coming to the fore. These include the problem of getting consistently good quality decisions on complex issues and of course the willingness of the parties to finalise issues once the interim (but binding) Adjudicator's decision is received.

Notwithstanding these problems, Adjudication has been firmly embraced by the industry as the number 1 method of resolving disputes and rightly so. There is no doubt that used properly Adjudication is a powerful tool that enables the parties to achieve certainty (and usually settlement) of the day to day disputes and differences that regularly occur in construction activities. These include payment difficulties, issues over time (entitlement to EOT), termination of the contract (determination), practical completion, defects, arguments over LADs etc etc.

RJC is proud of its record in advising its clients when to Adjudicate (or Arbitrate) and assisting them (or representing them) in the process. Utilising RJC's considerable expertise ensures that our clients get the best results and frees up their resources to do what they are best suited to (ie run their business).

For more information, on how we can help you in this area contact either Roger Smith or myself at our Bristol or Slough offices.

A Different Dispute, or Same One?

By Roger Smith

In the recently reported case *Quietfield Limited v Vascroft Contractors Limited* [2006] EII ER (D) 17 (Feb), RJC acted on behalf of the defendants, Vascroft. In this case, the claimant sought to enforce an adjudicator's decision that the defendant should pay the claimant an amount of Liquidated and Ascertained Damages for a specific period of delay beyond the Date for Completion. There had already been a previous adjudication between the parties, during which the defendants had then been the referring party and had sought the award of an extension of time, based on certain issues, although none was awarded. The adjudicator in the first adjudication decided that the referring party had failed to discharge its burden of proof.

In the second adjudication, referred by the claimant, the claimant sought the recovery of LADS for the period in question in the first adjudication. In response, the defendant submitted a further and different extension of time claim complete with logic linked programmes, critical paths and delay analyses. The adjudicator refused to consider this further extension of time claim on the basis that it had been decided in a previous adjudication that the defendant had failed to prove its case. Accordingly, he made an award in favour of the claimant. The defendant refused to pay, and the claimant issued enforcement proceedings.

Mr Justice Jackson reviewed the extension of time claims submitted during the course of both adjudications and concluded that they were different claims. Whilst the Scheme for Construction Contracts (England and Wales) Regulations 1998, SI 1998/649 ("the scheme") provides that: "An adjudicator must resign where the dispute is the same or substantially the same as one which has previously been referred to adjudication and a decision has been taken in that adjudication"; this was not the case in this instance and accordingly the adjudicator was wrong not to consider the extension of time claim as a defence to the levying of LADs. Accordingly, the award in the second adjudication was not enforced.



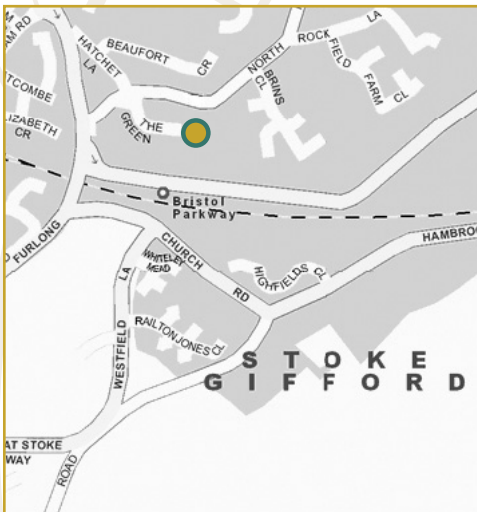
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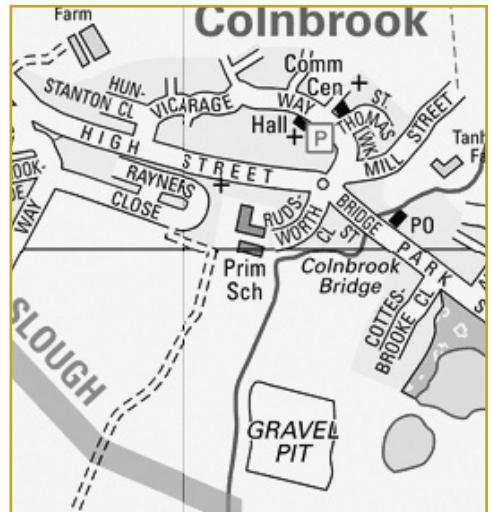
This newsletter will be posted on our website shortly www.rjc-consultants.co.uk. We would be delighted to add your company's name on to our list of clients on our "Clients" page, so please contact Helen Burbridge, our Business Development Manager, in order to arrange this.

We are located... Bristol



HEAD OFFICE
The Court Annex, The Green,
Stoke Gifford, Bristol BS34 8PD
Tel: 0117 931 9750 Fax: 0117 979 8234
email: bristol@rjc-consultants.co.uk

Slough



SLOUGH OFFICE
Colne House, High Street,
Colnbrook, Slough SL3 0LX
Tel: 01753 685 745 Fax: 01753 684 579
email: slough@rjc-consultants.co.uk

www.rjc-consultants.co.uk

UK REGISTER OF EXPERT WITNESS

INVESTOR IN PEOPLE

MEMBER OF BRISTOL CHAMBER OF COMMERCE

HEAD OFFICE:

The Court Annex, The Green
Stoke Gifford, Bristol BS34 8PD

Tel: 0117 931 9750
Fax: 0117 979 8234
email: bristol@rjc-consultants.co.uk

SLOUGH OFFICE:

Colne House, High Street,
Colnbrook, Slough SL3 0LX

Tel: 01753 685 745
Fax: 01753 684 579
email: slough@rjc-consultants.co.uk

LEICESTER OFFICE:

360 Melton Road,
Leicester LE4 7SL

Tel/Fax: 0116 266 5970

RJC Consultants is the trading name of RJC Construction Consultants Ltd., a company registered in England.
Registered Office: Llanover House, Llanover Road, Pontypridd CF37 4LB, Registered No 3704626
Director: Ray Crabbe FRICS FCIOB