

Our ref: CJW/CBB/THRRI/1/Matters/8434803.1

Your ref:

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BY EMAIL ONLY

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Mr Chris Hope
Three Rivers District Council
Northway
Rickmansworth WD3 1RL

Dear Chris

William Penn Leisure Centre

Following our telephone conversation this morning, I attach a copy of the Adjudicator's Decision in the adjudication on Section 2 of the Works ("the Adjudication"). In short, the Adjudicator has extended Gee's time for completion of the Section 2 Works to 3 October 2008.

My comments on the Adjudication Decision are as follows:

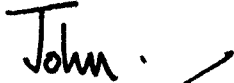
- 1 The Decision is brief, sometimes not terribly grammatical and in places rather puzzling. Nevertheless, the Adjudicator seems to have reached his Decision by means of a logical thought process, even though we might disagree with some of his reasoning.
- 2 You will recall that when Dr David Aldridge was instructed he set out very clearly in his first report why an extension of time to 10 September was appropriate. It is clear from the Decision that the Adjudicator has placed considerable reliance on Dr Aldridge's two reports on the basis that he considers him to be an independent expert viewing matters with objectivity, which was clearly not the case with Gee.
- 3 Although it appears that the Adjudicator may not fully have understood Dr Aldridge's reports in their entirety (the comment in paragraph 20 about it being impossible to establish which scenario is preferred is perplexing because Dr Aldridge makes it very clear which scenario he believes applies), nevertheless the Adjudicator has plainly considered the two reports with some care. Gee's failure to submit a report or even a witness statement has clearly counted against them.

- 4 The logic of allowing a two week extension for carrying out work following receipt of the battening details is reasonable. We might take issue with starting the two week period with the actual date of receipt of the instructions as it is arguable the instructions need not have been given any earlier because of Gee's lack of progress, but this is clearly a view that the Adjudicator did not share. His further extension to take account of the fitting of the equipment in November took place during a period of culpable delay by Gee but the award of an extension of time for this period, whilst capable of criticism, is not wholly unreasonable.
- 5 The award of an extension of time from 3 July (as granted by Atkins) to 3 October represents an extension of 92 days. This would otherwise lead to Gee being entitled to a refund of liquidated damages at the rate of £324 per calendar day, making a total of £29,808. That is, however, a theoretical calculation as no sums are due to be paid to Gee until the completion of the project and at that stage the sums due from Gee to TRDC in respect of the additional costs of completion and the costs of the remedial work will be many times that figure. As Gee would probably be unable to pay damages of the size to which TRDC would then be entitled, a deduction of less than £30,000 is likely to be of no practical consequence.
- 6 As indicated at the meeting of the Cabinet and Management Board on Friday I view an extension of time of this length as being disappointing to Gee and very acceptable to TRDC. It has no affect, in my opinion, on the likely validity of the termination of Gee's employment on 30 January 2009. The Adjudicator himself states that Gee have been successful only "*to a limited extent*" and it is my view that Gee launched the adjudication in the hope of obtaining an extension of time at least until 17 November, being the date of partial possession of the Fitness Suite. That they failed to achieve this by a significant margin must be a blow to them.
- 7 Also relevant is the reliance that the Adjudicator has placed on Dr Aldridge's reports. This will stand us in good stead on any subsequent adjudication where an independent and objective report from Dr Aldridge will be served. If anything, it rather reinforces my view that it would now be appropriate for TRDC to consider very carefully the commencement of an adjudication against Gee in relation to extensions of time issues on the Section 1 Works.
- 8 There are two final procedural issues which need to be dealt with. First, TRDC must pay the Adjudicator's fees and expenses when these are invoiced and then recover a 50% share from Gee. This has been done by the Adjudicator purely because he sees it as an easy way to ensure that his fees are paid. Second, Atkins must now issue a formal extension of time to 3 October 2008 and then an equivalent Notice of Non-Completion from that date so that the remaining liquidated damages can still be claimed by TRDC. I will write separately to Nick Surman on this point.

.../continued

Please let me know if there is anything further that you need from me in connection with the Adjudicator's Decision.

With kind regards
Yours sincerely

Handwritten signature of John Wright in black ink, with a diagonal line extending from the end of the signature.

John Wright
For and on behalf of Bird & Bird LLP

enc

cc Patrick Martin (TRDC)
Peter Brooker (TRDC)
James Baldwin (TRDC)
Steven Halls (TRDC)
David Gardner (TRDC)
Alexander Korff (B&B)