



OUTER HOUSE, COURT OF SESSION

[2024] CSOH 5

CA54/23

OPINION OF LORD RICHARDSON

in the cause

UK GRID SOLUTIONS LIMITED and AMEY POWER SERVICES LIMITED

Pursuers

against

SCOTTISH HYDRO ELECTRIC TRANSMISSION PLC

Defender

Pursuers: MacColl KC, Brodies LLP
Defender: Borland KC, MacRoberts LLP

24 January 2024

Introduction

[1] In July 2018, the pursuers formed a joint venture consortium called GE Amey JV.

[2] In October 2018, the pursuers entered into a contract with the defender in respect of certain works to be carried out at an existing electricity substation on the outskirts of Fort Augustus. In terms of the parties' contract, the works to be carried out by the pursuers included the construction of a new substation building together with the installation and commissioning of the related infrastructure. However, responsibility for the delivery and installation of two transformers (SGT5 and SGT6) remained with the defender.

[3] The conditions of the parties' contract were the core clauses and the clauses for main Option A, dispute Option W2 and secondary Options, X2, X5, X7, X15, X16, X18, C20, Y(UK) 2 and Z of the NEC3 Engineering and Construction Contract (June 2005) (with amendments June 2006 and September 2011).

The dispute between the parties

[4] In the event, the delivery and installation of the two transformers was delayed. In terms of the parties' contract, this delay gave rise to a compensation event (referred to as "CE65518"). The Project Manager made an assessment that CE65518 had no effect upon the Defined Cost, Completion or meeting a Key Date (as each of those terms was defined under the parties' contract).

[5] The pursuers rejected the Project Manager's assessment of CE65518. On 26 October 2022, the pursuers submitted their own assessment and claim in respect of the impact of the delays associated with SGT5 and SGT6. The defender, in turn, rejected the pursuers' claim valuing it at nil in their Payer Notice dated 7 December 2022.

The adjudication

[6] By Notice dated 6 March 2023, the pursuers gave notice of their intention to refer the dispute to adjudication. An adjudicator was appointed on 10 March 2023. The pursuers submitted their Referral dated 13 March 2023 seeking by way of redress, among other orders, an order for payment of such other sum as the adjudicator would determine was due in respect of increased Defined Cost under the parties' contract. The pursuers also requested that the adjudicator provide reasons for his decision.

[7] The adjudicator issued his decision on 3 May 2023. Section 12 of the adjudicator's decision included the following orders:

“12.13. I declare that the Contractor is entitled to an increase in the Defined Costs (including Fee) in the sum of £1,834,573.43.

12.14. I order for payment of £1,834,573.43, or such other sum as the Adjudicator may decide, within 7 days of the Adjudicator's. [sic]

12.15. I declare that the Contractor is entitled to interest on the sum noted at paragraph 12.14 above in the sum of £98,367.26 together with further interest of 6% on the sum of £18,834,573.43 [sic] from 02 February 2023 to the date of the Adjudicator's Decision, which I calculate at £301.57 per day until the capital sum paid.

12.16. I order for payment of the interest noted in paragraph 12.15 above, within 7 days of the Adjudicator's decision.”

[8] The defender refused to comply with the adjudicator's decision and the pursuers raised the present proceedings seeking enforcement.

[9] I heard the case at debate at which, on the one hand, the defender sought reduction of the adjudicator's decision and decree of absolvitor and, on the other, the pursuer sought decree for payment in terms of the adjudicator's decision.

The defender's arguments

[10] Senior counsel moved me to grant decree of absolvitor and to reduce the adjudicator's decision on three grounds.

- First, the adjudicator had failed to exhaust his jurisdiction as he had failed to address certain relevant and material defences advanced by the defender relating to delay damages and deductions or set-off.
- Second, if, contrary to the first argument, the adjudicator did, in fact, address and reject the defender's argument, he gave no reasons for doing so.

- Third, the adjudicator's purported financial award was meaningless and unenforceable.

The defender's first and second arguments

[11] Although logically separate, the first and second arguments advanced by the defender were closely related. The starting point for both of these arguments was the uncontroversial proposition that, when considering questions of jurisdiction, the scope of an adjudication necessarily included any ground founded upon by the responding party (*Hochtief Solutions AG v Maspero Elevatori SpA* 2021 SLT 528 at para 27). It followed that where an adjudicator failed to address and determine a material line of defence, this will result in unfairness and a breach of natural justice. (*Construction Centre Group Ltd v Highland Council* at 2002 SLT 1274, para 19; *Joint Administrators of Connaught Partnership Limited v Perth and Kinross Council* 2014 SLT 608 at paras 18 to 21).

[12] This initial proposition led to senior counsel to his second, related proposition namely, that, where required to give reasons, an adjudicator was obliged to make clear that he or she had decided all essential issues properly put before him or her by the parties. In other words, the parties should be able to understand from the adjudicator's reasons, in the context of the adjudication procedure, what it was that the adjudicator had decided and why. (*NKT Cables A/S v SP Power Systems Limited*, 2017 SLT 494 at para 115; *Thermal Energy Construction Limited v AE & E Lentjes UK Limited* [2009] EWHC 408 (TCC) at paras 21 to 23).

[13] Against this background, senior counsel highlighted the fact that the parties' contract set out contractual completion dates and associated rates of liquidated damages for relevant sections of the contractual works. In the adjudication, the pursuers had sought extensions of time to the relevant contractual completion dates together with "alleviation" from the

associated liquidated damages. This was in addition to the pursuers' claim for an order for payment.

[14] In the adjudication, the defender denied that the pursuers were entitled to any extension of time. The defender's position, as set out in the response submission, was that the pursuers were in critical and culpable delay caused by the pursuers' lack of progress, poor coordination and defects in their works. Accordingly, the defender claimed that it was entitled to recover liquidated damages at the contractually agreed rate from the pursuers for the periods of delay beyond the applicable contractual completion dates. To this end, in its Response submission, the defender sought declarations by the adjudicator that it was entitled to payment from the pursuers of these damages. In total, the defender sought £5,608,000 in respect of liquidated damages.

[15] In its response, the defender also argued, in the alternative, that even on the pursuers' own case in respect of the extensions of time to the contractual completion dates which the pursuers themselves sought, the defender was still entitled to liquidated damages in the sum of £1,513,000. Senior counsel drew my attention to the fact that, in the defender's rejoinder submission, the defenders had also explicitly argued:

"10.5 Even if the Adjudicator were to conclude that GE Amey was entitled to extension(s) of time and a change in the Prices (which is denied) the Adjudicator could not grant the orders for payment sought by GE Amey because:-

[...]

10.5.3 on its own case GE Amey is liable for £1,513,000 of liquidated damages, which SHE is entitled to deduct/set off against any sums otherwise due to GE Amey."

Senior counsel accepted that this was the first, and indeed only, occasion on which the defender had referred expressly to set-off within its submissions. However, he submitted

that this made no difference. He asked rhetorically: if the defender's argument otherwise represented a good enough defence, what further articulation did it require?

[16] Turning to the adjudicator's decision itself, senior counsel submitted that, in short, the adjudicator had not referred to, let alone determined, the defender's arguments relating to the pursuers' failure to achieve completion by the contractual completion dates; the pursuers' consequential liability to the defender in respect of liquidated damages; and, the defender's alternative argument in respect of its entitlement to liquidated damages which took, as its starting point, the pursuers' own claims for extensions of time.

[17] As such, the adjudicator had failed to address a material line of defence advanced by the defender. In terms of the adjudicator's own findings in respect of the pursuers' claims for extensions of time to the contractual completion dates, the defender's entitlement to liquidated damages would have resulted in a complete defence of set-off in that, had it been sustained, no sums would have been payable to the pursuers.

[18] Senior counsel accepted that in section 10 of the decision, the adjudicator stated as follows:

"10. Payment

10.1. I was asked in the Redress Section of the Notice a Declaration and Order for Payment.

10.2. In the Rejoinder my power to award a payment was questioned on the basis of the alleged restrictions placed on me by the restricted nature of the Referral.

10.3. In the Surrejoinder I was asked to assess and pay the compensation event as if the compensation event was progressed in accordance with the terms of the Contract.

10.4. I agree with the Contractor in this matter. If the compensation event had been assessed in accordance with the Contract, payments would have been made accordingly. Adjudication is a process to facilitate cash flow. Therefore, had the Project Manager certified the payments in accordance with my assessments in a prospective nature, the Employer would be in no worse financial status.

10.5. Accordingly, I shall make a Declaration and Order for payment in the operable part of the Decision below.”

[19] However, senior counsel submitted that this passage of the decision simply did not address the defender’s arguments in respect of liquidated damages and set-off. This passage appeared to relate to a point taken by the defender during the course of the adjudication proceedings to the effect that the pursuers had not identified the relevant payment application or notice to be opened up in terms of the contractual payment mechanisms.

[20] Turning to the defender’s second argument, senior counsel submitted that, on the assumption that the adjudicator had rejected the defender’s arguments in respect of liquidated damages and set-off, then his decision failed to disclose the reasons for that rejection.

[21] Anticipating an argument for the pursuers, senior counsel rejected the suggestion that the adjudicator had no need specifically to address the defender’s set-off defence because of the “route” which the adjudicator had followed in reaching his decision. This argument proceeded on the basis that the adjudicator had sought to determine what ought to have happened had the terms of the parties’ contract been complied with contemporaneously. On this approach, at the time at which sums ought to have been paid by the defender to the pursuers, the issue of set-off would not have arisen. Senior counsel for the defender submitted that the fundamental problem with this argument was that if this was the basis of the adjudicator’s decision, he had not spelled this out in his decision. Senior counsel pointed out that the adjudicator did not appear to have awarded interest on this basis.

The defender's third argument

[22] The defender's third argument could be articulated very shortly. The part of the decision upon which the pursuers relied – paragraph 12.14 of the decision – was meaningless and thus unenforceable. That paragraph provided:

“12.14. I order for payment of £1,834,573.43, or such other sum as the Adjudicator may decide, within 7 days of the Adjudicator's.” [sic]

This paragraph did not order the defender to make payment of a specified sum. Nor did it specify the time period within which any such payment was to be made.

[23] Senior counsel drew to my attention the fact that the contractual conditions contained a mechanism whereby the adjudicator could correct clerical errors within 14 days of giving his decision – clause W2.3(12). However, neither party had drawn any issues with paragraph 12.14 to the adjudicator's attention and no correction had been made. It was not, he submitted, for the court to try to correct the adjudicator's error at this stage. To act in this way would usurp the role of the adjudicator.

The pursuers' response

[24] Senior counsel for the pursuers moved me to find the defences to be irrelevant and to grant decree for payment in terms of the adjudicator's decision.

Background – the adjudication

[25] Senior counsel emphasised, by reference to the defender's response submission, that one of the issues on which the parties had been in dispute was the correct approach to the assessment of the pursuers' entitlements for compensation events under the contract. This issue arose in the context of the pursuers' claims arising from the late delivery and

installation of transformers SGT5 and SGT6. During the adjudication, the pursuers had contended that the contract required a prospective approach be adopted notwithstanding that these events had in fact occurred some time ago. In other words, the impact of the delays to the transformers required to be assessed from the date on which, according to the pursuers, the Project Manager ought to have instructed the pursuers to submit quotations in respect of the compensation events. The defender, on the other hand, had argued that a retrospective approach which took account of what had actually transpired as a result of the transformer delays ought to be adopted. This had been a significant issue before the adjudicator. Each side had made multiple submissions in relation to it. It also underlay differences in approach by both side's experts.

[26] Senior counsel highlighted that the defender's position on this issue of approach underpinned its claims for liquidated damages. Those claims were based on the state of completion of the works as they were during the course of the adjudication. This was of significance because, on the pursuers' approach, the defender's claims for liquidated damages could not represent a defence to the pursuers' claims precisely because the pursuers' entitlement pre-dated the dates of completion and, consequently, the defender's entitlement to liquidated damages. It was for this reason that the pursuers had framed the relevant part of the relief sought as an "alleviation" or relief from liquidated damages commensurate with the extension of time sought by them.

[27] In relation to the set-off defence, senior counsel accepted that the argument had been made by the defender in the Rejoinder submission (see paragraph [15] above). It followed that he also accepted that the adjudicator required to deal with the argument. However, he submitted that one could reasonably infer from the way in which this argument had been made by the defender - in the final sentence of its second set of submissions - that neither

party regarded this argument as being of the greatest importance. He submitted that this provided the context for the way in which the argument was subsequently dealt with by the adjudicator.

The adjudicator's decision

[28] In relation to the adjudicator's decision, senior counsel highlighted paragraph 5.11 which provided as follows:

"5.11. Due to the number of documents submitted and the sheer size and volume of information in this adjudication, it is not possible to rehearse all the parties' points, and arguments, in my decision. However, I considered all the arguments and defences in my summary deliberations below."

Senior counsel referred to this paragraph of the decision in light of what was said by the Lord Justice Clerk in *Gillies Ramsay Diamond v PJW Enterprises Limited* 2004 SC 430 at paragraph 28 and Mr Justice Coulson (as he then was) in *Balfour Beatty Construction Northern Limited v Modus Corovest (Blackpool) Limited* [2008] EWHC 3029 (TCC) at paragraphs 45 to 48. The adjudicator had explicitly made clear that he had considered all of the parties' arguments whether or not he had referred to every point in his decision. Senior counsel submitted that there was nothing in the decision to indicate that the adjudicator did not do what he said he had.

[29] Section 8 of the decision set out the adjudicator's decision and reasoning. In broad terms, the adjudicator endorsed the submissions of the pursuers and its experts as to the correct approach to be adopted in the assessment of compensation events. In other words, the adjudicator held that compensation events were to be assessed proactively at the time when the Project Manager had or ought to have instructed the contractor to submit a quotation (paragraph 8.31). The adjudicator also accepted in principle the approach of the

pursuers' expert (paragraph 8.69). Having dealt with his assessment of the periods of delay (paragraph 8.77), the adjudicator set out his assessment of the quantum of the pursuers' claim (paragraph 8.91):

"8.91. Accordingly, I assess the Compensation Events at £1,834,573.43. My calculations are included [sic] at Appendix A to this Decision [...]"

Senior counsel submitted that this paragraph of the decision entirely cut across the defender's third argument.

[30] Consistent with his findings in respect of delay, the adjudicator granted the pursuers relief from liquidated damages for the same periods (paragraph 8.93). Contrary to what had been suggested on behalf of the defender, the adjudicator also set out interest calculations in respect of each of the compensation events in Appendix A to the decision (paragraph 9.2).

[31] Section 10 of the decision set out the adjudicator's findings in relation to the parties' competing submissions in respect of the making of an order for payment (see paragraph [18] above). Senior counsel placed particular emphasis on paragraphs 10.3 and 10.4 of the decision. In his submission, at this point in the decision, the adjudicator was agreeing with the pursuers that the compensation events relating to the transformers ought to have been assessed by the Project Manager prospectively and paid at the time. Applying this reasoning, the adjudicator concluded further that the defender would have been in no worse financial position. This followed because, notwithstanding this treatment of the compensation events, it would still, thereafter, be open to the defender to advance any financial claims it might have. Therefore, on this basis, the adjudicator went on to state that he would order payment (paragraph 10.5).

[32] Section 12 of the decision was entitled "Relief and Remedies Sought". Senior counsel recognised that an error had clearly occurred in the wording of paragraph 12.14. He

suggested that it was likely that it had arisen as a result of text being cut and pasted.

However, senior counsel submitted that it was clear that the adjudicator intended to order payment of the sum which he had identified and found due. In the same way, there was clearly an error in the wording of paragraph 12.15 but it was an obvious typographical error. Considering the interest calculation set out in Appendix A to the decision, the adjudicator's intention was clear.

The defender's first and second arguments

[33] Senior counsel submitted that the defender's first and second arguments were not really discrete points: the argument that the adjudicator had failed to exhaust his jurisdiction in not dealing with the set-off argument led on to and was closely related to the argument criticising the adjudicator's reasoning on that point.

[34] In relation to the law, senior counsel submitted that there was little between the parties. He reminded me of what had been said by the First Division in *Atalian Servest AMK Limited v BW (Electrical Contractors) Limited* 2023 SLT 539 at paragraphs 35 and 36 concerning, first, the improvement of cash flow being an important underlying objective of adjudication; and second, the court's reluctance to interfere with an adjudicator's award unless the adjudicator had acted in a way which was *ultra vires*.

[35] In relation to the defender's second argument, senior counsel also drew my attention to the useful digest of a number of the leading cases in the judgment of Mr Justice Akenhead in *Balfour Beatty Engineering Services (HY) Limited v Shepherd Construction Limited* [2009] EWHC 2218 (TCC) at paragraph 48. In particular, he highlighted the following:

“(d) The fact that the adjudicator does not deal with every single argument of fact or law will not mean that the decision is necessarily unreasoned. He or she should deal

with those arguments which are sufficient to establish the route by which the decision is reached.”

In the same vein, senior counsel also referred both to paragraph 79 of Mr Justice Akenhead’s judgment and paragraph 20 of Lord Sandison’s opinion in the Outer House in *Atalian Servest AMK Limited v BW (Electrical Contractors) Limited* [2023] CSOH 14.

[36] Senior counsel submitted that properly understood there had been no failure by the adjudicator either to exhaust his jurisdiction or properly to give reasons. Given the route which the adjudicator had followed in reaching his decision, there was no need for the defender’s set-off arguments to be specifically addressed. The adjudicator had concluded that the pursuers were basically correct as to the approach to be adopted in the assessment of compensation events (see paragraphs [25], [26] and [29] above): namely, compensation events were to be assessed proactively at the time when the Project Manager had or ought to have instructed the contractor to submit a quotation. The adjudicator concluded that payment should be ordered on this basis as well in order to facilitate cash flow. In these circumstances, on the logic of the adjudicator’s decision, the defender’s set-off arguments, based on claims for liquidated damages, had not arisen at the time that the pursuers’ claims ought to have been paid and, therefore, ought not to hinder the payment sought by the pursuers in the adjudication.

The defender’s third argument

[37] Senior counsel dealt with this argument more briefly. He submitted that there was no merit in it. Read as a whole, there was no dubiety as to what had been awarded by the adjudicator in the decision. A reasonable reader, informed as to the context of the parties’ dispute, who read the decision would have no difficulty in discerning what the adjudicator

had decided (*Babcock Marine (Clyde) Limited v HS Barrier Coatings Limited* [2019] CSOH 110 at paragraph 35).

The defender's reply

[38] In reply, senior counsel for the defender highlighted that, in their reply submissions during the adjudication, the pursuers had challenged the adjudicator's jurisdiction to grant the defender the redress sought in the response submission: in other words, the declarations that the defender was entitled to payment of various sums in respect of liquidated damages from the pursuer. The fact that the pursuers had made this argument pointed up the absence of any treatment by the adjudicator in his decision of the defender's set-off argument. Senior counsel submitted that it was not clear whether the adjudicator had rejected this part of the defender's argument and, if so, on what basis? Had this been on the basis of the pursuers' jurisdiction argument or for some other reason? In this regard, he drew my attention to the judgement of Judge Davies in *Thermal Energy Construction* (as above at [12]) at paragraph 22.

Decision

[39] The background to the Housing Grants, Construction and Regeneration Act 1996 and adjudication is well known. One of the objectives of the introduction of adjudication was to facilitate cash flow in the construction industry by encouraging parties to "pay now, argue later". To that end, adjudication is intended to be a robust and summary procedure albeit a provisional one (see *Atalian Services AMK Limited* (as above at [34]) at paragraphs 35 and 36, and the authorities cited there). As a result, the court's approach to the enforcement of

adjudicators' decisions, developed over a series of cases, has been recently summarised as follows:

- “• the court will only interfere in the plainest of cases
- it is chary of technical defences
- if the adjudicator has answered the right questions, his decision will be binding, even if he is wrong in fact or law
- The court will, however, intervene if the adjudicator: (a) was not validly appointed, (b) acted outside his jurisdiction, (c) did not comply with the rules of natural justice, or (d) provided inadequate reasoning.”
(*Hochtief Solutions AG* (as above at [11]) at paragraph 22)

The defenders' first and second arguments

[40] Although presented as two separate points, the defender's first and second arguments essentially boil down to a single complaint that the adjudicator has failed to address the defender's set-off defence based on its claimed entitlement to liquidated damages.

[41] There was no dispute between the parties that where an adjudicator has failed to address and determine a material line of defence, this will result in unfairness and a breach of natural justice which will mean that the court will not enforce the adjudicator's decision (*Construction Centre Group Ltd v Highland Council* at 2002 S.L.T 1274, para 19; *Joint Administrators of Connaught Partnership Limited v Perth and Kinross Council* 2014 SLT 608 at paras 18 to 21).

[42] In the present case, I am satisfied that the defence of set-off had been put before the adjudicator by the defender. This line of defence was advanced in the defender's rejoinder submissions as one of the grounds on the basis of which the adjudicator was urged to refuse to grant the redress sought by the pursuers (at paragraph 10.5.3 – see paragraph [15] above).

I am also satisfied that this line of defence was material in that it had the potential, if upheld, to negate any payment to the pursuers in respect of their claims.

[43] I consider that the pursuer was correct to accept that this line of defence could not be ignored by the adjudicator notwithstanding that the reference to set-off in the final sentence of the rejoinder appears to have been the first and only time that this defence was expressly articulated in the defender's voluminous submissions. Equally, I also consider that it is important not to lose sight of the emphasis (or lack of it) that the defender had placed on the line of defence when having regard to its subsequent treatment by the adjudicator.

[44] Turning to the adjudicator's decision, I am satisfied that the adjudicator did address and determine this line of defence in section 10 of the decision, where the adjudicator set out his decision in respect of the redress sought by the pursuers (see paragraph [18] above). In paragraph 10.2, the adjudicator referred to the arguments advanced by the defender in the Rejoinder submission in respect of the redress by the pursuers. The adjudicator referred to these arguments as being "on the basis of the alleged restrictions placed on me by the restricted nature of the referral". I reasonably understand this to be a reference to the arguments set out by the defender in section 10 of the rejoinder submission where, as I understand it, the defender submitted that, having restricted the scope of the dispute to the compensation events relating to the transformers, the pursuers were thereby exposed to liability for liquidated damages arising from late completion. Section 10 of the rejoinder provides as follows:

"GE Amey's position in respect of the redress is confused and confusing.

10.2 On the one hand it seeks an extension to the completion date and various sectional completion dates on the basis of the events on which it relies in these proceedings, and at the same time, in paragraph 7.5 of the reply asserts, '...the period of delay to which this adjudication relates is not the entire period of delay to the project.....Were the Adjudicator to make an award in terms of the redress sought by

the Respondent, such an award would impinge on, and potentially exclude, those extant claims. Any such decision would therefore, be, at best, premature.'

10.3 With respect, GE Amey has chosen to present its claim in the way in which it has, and it cannot have it both ways. It cannot cherry pick its claims and then seek to absolve itself of the consequences of a restricted referral in the event that it is unsuccessful.

10.4 It seeks extensions of time, relief from the payment of liquidated damages and increases in the Prices. In the event that the Adjudicator concludes GE Amey is not entitled to the alleviation of Liquidated Damages in specified sums, the natural consequence of that is that those Liquidated Damages are payable by GE Amey. It is a natural and direct consequence of a decision by the Adjudicator that GE Amey is NOT entitled to the redress it seeks, and the Adjudicator is entitled to grant the declarators sought by SHE in section 10 of the Response as to do so would simply amount to an express rejection (rather than implied) of the redress sought by GE Amey.

10.5 Even if the Adjudicator were to conclude that GE Amey was entitled to extension(s) of time and a change in the Prices (which is denied) the Adjudicator could not grant the orders for payment sought by GE Amey because:-

10.5.1 GE Amey has not given the Adjudicator the jurisdiction to open up and revise a payment certificate, which is the mechanism for payment of sums due under section 5 of the Call-Off Contract;

10.5.2 an isolated order for payment as a result of the events referred to this Adjudication would not be in accordance with the terms of the Call-Off Contract, would not take account of items that form part of the assessment of sums due under the payment mechanism (i.e. retention); and

10.5.3 on its own case GE Amey is liable for £1,513,000 of liquidated damages, which SHE is entitled to deduct/set off against any sums otherwise due to GE Amey."

[45] At paragraph 10.3 of the decision, the adjudicator goes on to make reference to the submissions made by the pursuers in the surrejoinder submissions and, in particular, to refer to the pursuers' repetition of its argument that the compensation events should be assessed prospectively from the date when the Project Manager ought to have instructed the contractor to submit quotations (paragraph 3.24 of the surrejoinder). As was noted by senior counsel for the pursuers in his submissions, the parties' competing arguments on the correct

approach to be adopted to the temporal treatment of compensation events formed a significant part of the dispute before the adjudicator (see paragraphs [25] and [26] above).

[46] The obvious relevance of this argument by the pursuers at this point of the adjudicator's decision is made clear in paragraph 10.4 of the decision:

"10.4. I agree with the Contractor in this matter. If the compensation event had been assessed in accordance with the Contract, payments would have been made accordingly. Adjudication is a process to facilitate cash flow. Therefore, had the Project Manager certified the payments in accordance with my assessments in a prospective nature, the Employer would be in no worse financial status."

[47] From this paragraph, it is reasonably clear that the adjudicator has concluded, in agreement with the pursuers' arguments, that the pursuers ought to have been paid by the defender following the assessment of the compensation events in accordance with the parties' contract. It follows, from the adjudicator's reasoning, that had this been done, the payment by the defenders would have pre-dated the defender's claims for liquidated damages. On this basis, had the contract been complied with, the defender's arguments, including set-off, based on its entitlements for liquidated damages could not have been advanced at the time payment ought to have been made by the defender.

[48] That this is what the adjudicator intended is made clear both by his subsequent reference to adjudication facilitating cash flow and by the final sentence of the paragraph. The reason that the defender would be in no worse financial position had the Project Manager certified the payments in accordance with the adjudicator's approach is precisely because, on the adjudicator's logic, at the time certification ought to have occurred, the defender had no entitlement to liquidated damages. The adjudicator then goes on to conclude, in paragraph 10.5, that he will make a declaration and order payment.

[49] It is clear from the case law which was cited to me that it is not necessary for an adjudicator to deal in his decision expressly with every argument made to him (*Babcock*

Marine as above at [37] at paragraph 35) provided that he deals with the arguments which are necessary and sufficient to establish the route by which he reached his decision (*Balfour Beatty Engineering Services (HY) Limited* as above at [35] at paragraph 48). I consider that the adjudicator's decision in the present case meets this test.

[50] In light of the foregoing, given that it is possible to discern from the adjudicator's decision, reasonably construed against the background of the submissions made to him, both what he decided and the reasons for that decision, I reject the defender's first and second arguments.

The defender's third argument

[51] The defender's final argument can be dealt with more briefly.

[52] It is plain that both paragraphs 12.14 and 12.15 of the adjudicator's decision contain errors. However, I do not consider that any reasonably informed reader of the decision would have any doubt that the adjudicator intended to order payment by the defender to the pursuers of the sum of £1,834,573.43. That is the sum which the adjudicator had declared, at paragraph 12.13 of the decision, the pursuers were entitled to as an increase in the defined costs (including fee) (as those terms are defined in the parties' contract). I also have no doubt that the reasonably informed reader would have understood that payment of that sum was to be made, along with the interest awarded in paragraph 12.15 of the decision, within 7 days of the decision.

[53] Accordingly, I also reject this argument.

Disposal

[54] In light of my decisions in respect of the arguments advanced by the defender, I will repel the defender's pleas in law, sustain the pursuer's first to fourth pleas in law and grant decree *de plano* as first and second concluded for. As I was not addressed on it, I will reserve any question of expenses meantime.