Case No: HT-2018-000341

[2019] EWHC 169 (TCC)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4th February 2019

Before :

MR ROGER TER HAAR QC

- -

Between :

1. AXIS M&E UK LIMITED **2. AXIS PLUMBING NSW PTY LIMITED**	**Claimants**
- and -	
MULTIPLEX CONSTRUCTION EUROPE LIMITED	**Defendant**

- -
- -

Piers Stansfield Q.C. (instructed by **Glovers**) for the **Claimants**
Mark Chennells (instructed by **Fenwick Elliott LLP**) for the **Defendant**

Hearing date: 15th January 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR ROGER TER HAAR QC

Mr Roger ter Haar QC :

1. These proceedings are for the enforcement of an adjudicator's decision. At the heart of the dispute before the Court is the question whether the adjudicator had jurisdiction to correct what both parties accept was an error on his part.

2. In his original decision, the adjudicator made an error in the calculation of the sum payable, as a result of which he concluded that no sum was due to the Claimants. When the error was pointed out to him, the adjudicator corrected the error and, by the corrected calculation, decided that the Defendant should pay the Claimants the sum of £654,119.65.

3. The Claimants apply for summary judgment for the sum that the adjudicator determined in his corrected decision. The Defendant contends that the original decision, containing the error, is binding on the parties, and that the corrected decision is not, on the basis that the correction was outside the scope of the slip rule.

Background and Summary

4. The relevant facts are not in dispute between the parties, and the summary which follows is substantially taken from the skeleton argument submitted by Mr. Piers Stansfield Q.C., counsel for the Claimants.

5. The Claimants were engaged by the Defendant as mechanical and electrical sub-contractors for a residential development in Kensington, London W8 by a contract dated 1 June 2015.

6. By a Referral dated 10 August 2018, the Claimants referred to adjudication ("the Adjudication") a dispute concerning the valuation of the Claimants' works, and the sum due to them, pursuant to their application for payment dated 18 May 2018 ("the Application") and the Defendant's corresponding payment notice dated 5 June 2018 ("the Payment Notice"). Specifically, the dispute concerned:

   (1) the valuation of certain variations, the total of which the Claimants valued at £7,298,446.59 in the Application and the Defendant at £2,588,134.91 in the Payment Notice;

   (2) the Defendant's entitlement to deduct contra charges, the Defendant having deducted the sum of £783,924.60 from sums otherwise due to the Claimants in the Payment Notice, whereas the Claimants contended that no deduction should be made;

   (3) the Claimants' resulting entitlement to payment.

7. Paragraphs 1 to 4 of the Referral Notice read as follows :

   (1) By this adjudication on Interim Application 23, Axis seeks to challenge 17 individual Variation valuations made by Multiplex and every cross-claim item on Multiplex Payment Notice. Details of the Multiplex Variation valuation items challenged are set out within this Referral.

   (2) Axis does not wish to include its claim for loss and expense/prolongation within the scope of this adjudication. In the computation of the further amount to be paid to Axis, the Multiplex

assessment of £NIL will apply. Axis reserves all of its rights to pursue its claim for loss and expense/prolongation as a separate dispute.

(3) Multiplex has no entitlement to claim or deduct for its cross-claim. The Adjudicator is invited to decide that the valuation of Multplex cross claim is £NIL.

(4) The dispute relates to the valuation of the variations and the resultant payment to be made by Multiplex, pursuant to Interim Application 23.

8. Mr Paul Jensen ("the Adjudicator") was appointed as the adjudicator and the Adjudication proceeded under the Scheme for Construction Contracts ("the Scheme"). The parties agreed that the Adjudicator should have until Monday the 22nd October 2018 to reach his decision.

9. In his original decision dated the 18th October 2018 ("the Original Decision"), the Adjudicator summarised the dispute which he was asked to resolve in paragraph 4 of his Decision:

> The dispute is as to the Claimant's claim for a valuation of and payment for 17 variations contained within the Claimant's Application for interim payment No. 23 of 18th May 2018 together with the valuation of the Respondent's cross-claims plus interest and reimbursement of the adjudication nomination body fee. The Claimant claims payment of the sum of £8,956,182.73 within 14 days plus VAT as appropriate in respect of the variations and claims that the Respondent's contra-charges should be valued at £0.00. The Respondent denies liability and claims that in accordance with its Payment Notice dated 5th June 2018 the Claimant has been overpaid by the sum of £647,645.34.

10. Paragraphs 5 to 8 read as follows:

THE CLAIM

5. The claim fails.

MY FEES

6. The Claimant shall within 7 days pay my fees. My fees are £29,515.50 plus VAT of £5,903.10 being a total sum of £35,418.60. If the Respondent pays my fees then the Claimant shall forthwith reimburse the Respondent with the amount of my fees.

GENERAL

7. I have confined my explanations to the essentials only but nevertheless I have carefully considered all the evidence and submissions although not specifically referred to in this Decision.

THE CLAIM

8. My revised valuation for Application No. 23 for month ending 31st May 2018 is in the tables below and as explained in the notes which follow.

11. There followed a table which contained the following:

Total Gross Certified in the Payment Notice dated 5th June 2018	£19,282,680.04
Add Additional Amount of Variations as decided by me (from page 5)	£980,170.76
Sub-total	£20,262,850.80
Less Retention 1.5% (Agreed)	£303,942.76
Sub-total	£19,958,908.04
Less Previously Paid (Agreed) (including £200,000 paid in July)	£19,841,114.51

Sub-total	£117,793.53
Less Contra-Charges (from page 18)	£246.886.37
Balance to the Claimant	-£129,092.84

12. The Decision continued:

MY DECISION

My Decision is a negative balance in favour of the Claimant and therefore the claim fails.

13. In coming to his conclusions, the Adjudicator considered and determined the value of the variations, at £980,170.76 more than the Defendant's valuation, and the value of the contra charges at £246,886.37, which is £537,038.23 less than the Defendant's valuation. On this basis, the amount certified as due to the Claimants should have increased by £1,517,209.

14. In his calculation of the sum due, however, the Adjudicator erroneously deducted the sum he had determined as the total value of the contra charges of £246,886.37 from the sum certified to the Claimants by the Defendant, which already included a deduction in respect of contra charges of £783,924.60. Therefore, the calculation in the Original Decision deducted a total sum in respect of contra charges of £1,030,810.97 (£246,886.37 + £783,924.60), rather than the Adjudicator's valuation of £246,886.37. The result of this error was that, in the Original Decision (as shown in the table above) no sum was stated to be due to the Claimants and its claim was said to have failed.

15. On Monday the 22nd October 2018 (the date when his decision was due), the Adjudicator issued a corrected decision, which removed the error and made consequential changes to the decision ("the Amended Decision"). As a consequence of the correction of the error, he determined that the sum of £654,119.65 was payable to the Claimants, and that the Defendant should pay this amount and his fees.

16. In an email sent shortly before sending the Amended Decision, the Adjudicator said this :

> " There was confusion in the documents provided in the Referral at Tab 2 in that the second document headed 'Payment Notice' as signed by Mr. Sharpe on 5th May 2018 showed that the total certified after deduction of contra-charges of £783,924.60 gave a gross sum certified prior to retention of £19,922,737.09 and yet the Payment Notice on the previous page signed by Mr. Sharpe on the 4th June 2018 showed the gross sum before deduction of retention as £19,282,680.04. I therefore sent a number of emails to the parties to seek clarification of the amount paid and on the gross sum certified prior to retention, and I used the Claimant's figure in reply to my emails in my Decision. It was not clarified that that was after deduction of contra-charges, and no explanation was given as to the difference between the two versions of the Payment Notice. It is of course correct to say that my intention was that the contra-charges should be in the figure decided by me of £246,886.37, but whether or not this is a slip is not within my jurisdiction to decide, and therefore I will today send an amended decision correcting it as a slip, and it will be for the parties or others to decide which decision shall apply."

17. In the Amended Decision, paragraphs 5 and 6 were changed to read:

THE CLAIM

5. ~~The claim fails.~~ The Respondent shall within 7 days pay to the Claimant the sum of £654,119.65.

MY FEES

6. The ~~Claimant~~ Respondent shall within 7 days pay my fees. My fees are £29,515.50 plus VAT of £5,903.10 being a total sum of £35,418.60. If the Claimant ~~Respondent~~ pays my fees then the ~~Claimant~~ Respondent shall forthwith reimburse the Claimant ~~Respondent~~ with the amount of my fees.

18. The table at paragraph 8 was now altered to the following:

Total Gross Certified in the Payment Notice dated 5th June 2018	£19,282,680.04
Add back Contra-Charges previously deducted	£783,924.60
Sub-total	£20,066,604.64
Add Additional Amount of Variations as decided by me (from page 5)	£980,170.76
Sub-total	~~£20,262,850.80~~ £21,046,775.40
Less Retention 1.5% (Agreed)	~~£303,942.76~~ £315,701.63
Sub-total	~~£19,958,908.04~~ £20,731,073.77
Less Previously Paid (Agreed) (including £200,000 paid in July)	£19,841,114.51
Sub-total	~~£117,793.53~~ £889,959.26
Less Contra-Charges (from page 18)	£246.886.37
Balance to the Claimant	~~£129,092.84~~ £643,072.89

19. New text was inserted in paragraph 8 after the table:

INTEREST

The Claimant is entitled to interest at a rate of 5.5% on the said balance from the 30th June 2018 until this the date of my Amended Decision being the sum of £11,046.76.

20. Paragraph 9 was amended to read as follows:

MY DECISION

~~My Decision is a negative balance in favour of the Claimant and therefore the claim fails.~~ The total of my Decision is £643,072.89 plus interest of £11,046.76 being a total of £654,119.65.

The Present Application

21. The Claimants now seek to enforce the Amended Decision, seeking summary judgment in the sum of £654,119.65.

22. The Respondent opposes enforcement of the Amended Decision on the short ground that the amendments comprehended by the Amended Decision go beyond those permitted by the "slip rule" incorporated at paragraph 22A of the Scheme for Construction Contracts, because they were not made "so as to remove a clerical or typographical error arising by accident or omission."

The Statutory Provisions

23. Section 108(1) of the Housing Grants, Construction and Regeneration Act 1998 ("the HGCRA") provides that a party to a construction contract has the right to refer a dispute arising under the contract to adjudication under that section. Section 108(3A) of the HGCRA, as amended by section 140 of the

Local Democracy, Economic Development and Construction Act 2009, provides as follows:

> "The contract shall include provision in writing permitting the adjudicator to correct his decision so as to remove a clerical or typographical error arising by accident or omission."

24. This requirement is reflected in the Scheme at paragraph 22A (added by regulation 3(10) of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations SI 2011/2333):

> "(1) The adjudicator may on his own initiative or on the application of a party correct his decision so as to remove a clerical or typographical error arising by accident or omission.
>
> (2) Any correction of a decision must be made within five days of the delivery of the decision to the parties.
>
> (3) As soon as possible after correcting a decision in accordance with this paragraph, the adjudicator must deliver a copy of the corrected decision to each of the parties to the contract.
>
> (4) Any correction of a decision forms part of the decision."

25. Paragraph 23(2) of the Scheme, as amended, provides:

> "The decision of the adjudicator shall be binding on the parties, and they shall comply with it until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement between the parties."

Previous Authorities

26. Before the amendment of the HGCRA to include section 108(3A), and the amendment of the Scheme to include paragraph 22A, it was held that a term could be implied into a construction contract permitting an adjudicator to correct errors in a decision in Bloor Construction v Bowmer & Kirkland [2000] BLR 314. In that case, the adjudicator had initially erroneously failed

to use the correct amount of payments previously made in his calculation, which led to an incorrect determination of the sum due. The adjudicator subsequently corrected his decision on the basis that he had made a slip, and the issue in the proceedings was whether the original decision or the amended one was to be enforced. The Court held that a slip rule could be implied and that the amended decision should be enforced.

27. The decision in Bloor, and the later case of CIB Properties v Birse Construction [2005] BLR 173 were considered in YCMS v Grabiner [2009] EWHC 127; [2009] BLR 211. In that case, at paragraphs 48 to 50, Akenhead J summarised the position on the authorities as follows:

> "48. [His Honour Judge Toulmin C.M.G., Q.C.] returned to the adjudication "slip rule" (as I shall call it) in CIB Properties v Birse Construction [2005] BLR 173, in particular at paragraphs 33 to 35:
>
> > 33. I conclude, therefore, that the law before this case is that in relation to a slip or alleged slip there are two questions: (1) is the Adjudicator prepared to acknowledge that he has made a mistake and correct it? (2) is the mistake a genuine slip which failed to give effect to his first thoughts? If the answer to both questions is "Yes" then, subject to the important question of the time within which the correction is made and questions of prejudice, the court, if the justice of the case so requires, give effect to the amendment to rectify the slip.
> >
> > ….
>
> "49. In the CIB Properties and in the Bloor cases, HHJ Toulmin CMG QC referred to and relied upon Sir John Donaldson's analysis of what amounted to a slip under old court rules in the case of R v Cripps ex parte Muldoon [1984] QB 686:
>
> > "It is a distinction between having second thoughts and intentions and correcting an award to give effect to first thoughts or intentions which creates the problem. Neither an arbitrator nor a judge can make any claim to infallibility. If he assesses the evidence wrongly or misappreciates the law the resulting award or judgment will be erroneous but it cannot be corrected under section

> 17 (of the Arbitration Act 1950) or under the old Order 20 Rule 11. It cannot normally be corrected under section 22 (where the arbitrator has made a mistake). The remedy is to appeal if the right of appeal exists. The skilled arbitrator or judge may be tempted to describe this as an accidental slip but this is a natural form of self-exculpation.

"The learned judge also quoted with approval the commentary in Mustill & Boyd on Commercial Arbitration at page 406:

> This [the Arbitration Act 1996] enables the arbitrator to make an award on a claim which he has inadvertently overlooked such as an award of interest or to correct errors of accounting or arithmetic such as attributing a credit item to the wrong party but the section does not give the arbitrator licence to give effect to second thoughts on a matter on which he has made a conscious judgment.

"50. So far as the adjudication "slip rule" is concerned, the following can be said:

> "(a) An adjudicator can only revise a decision if it is an implied term of the contract by which adjudication is permitted to take place that permits it. It does not follow that, if it is purely a statutory arbitration under the HGRCA (if there is no contractual adjudication clause), such implication can be said to arise statutorily.
>
> "(b) If there is such an implied term, it can and will only relate to "patent errors". A patent error can certainly include the wrong transposition of names or the failing to give credit for sums found to have been paid or simple arithmetical errors.
>
> "(c) The slip rule cannot be used to enable an adjudicator who has had second thoughts and intentions to correct an award. Thus for example, if an adjudicator decides that the law is that there is no equitable right of set off but then changes his mind having read some cases feeling that he has got that wrong, such a change would not be permitted because that would be having second thoughts."

28. YCMS v Grabiner, and the cases which preceded it, were cases to which the statutory slip rule now contained in the Scheme did not apply.

29. In NKT Cables A/S v SP Power Systems Ltd [2017] CSOH 38 in the Outer House of the Court of Session, Lady Wolffe considered a case in which it was

argued that a provision equivalent to the statutory slip rule should be implied. This led her to consider the effects of a slip rule in those terms. At paragraphs [93] and [94] she said (emphasis in the original):

> "[93] What is the scope of the slip rule? Looking at regulation 22A of the Scheme as the likely formulation of the slip rule to be implied, the scope of the rule is relatively narrow: it enables the adjudicator "to correct his decision so as to remove a clerical or typographical error arising by accident or omission". Three features of this call for comment. First, the rule is not directed to pure omissions, ie something that an adjudicator meant to do but by some oversight he forgot to do. Secondly, the slip is in the nature of a "clerical or typographical" error. This betokens an error in **expression or calculation** of something contained within the decision, not an error going to the **reason or intention** forming the basis of that decision. Such slips might include an arithmetical error in adding or subtracting sums, mis-transposing parties' names, a slip in carrying over a calculation from one part of the decision to another or, as here, the mistaken insertion of a rogue number. Thirdly, it is this kind of slip (clerical or typographical) that is as a result of "accident or omission". This too, points to correction of slips or mistakes in expression, rather than changes to the reasoned or intended basis of the decision. All three of these features are consistent with the observations in **Bloor** and the analysis of the cases referred to therein, about the slip rule essentially being confined to corrections of the adjudicator's "first thoughts and intention". Were the scope of the slip rule broader, ie to include corrections of pure omissions (as I have called them) or to give effect to second thoughts or intentions, it would have the potential seriously to undermine the **interim** finality which is a feature of adjudications under the Scheme.
>
> "[94] While **Bloor** is a case about the implication of a term at common law, it seems to me that the scope of regulation 22A in the Scheme is entirely consistent with the discussion in that case, about the purpose and scope of a slip rule. If that is correct, the scope of the slip rule is confined to correcting a typographical or clerical error of something expressed within the four corners of the decision and which is apparent on the face of the decision. It is not warrant to correct what are more substantive errors, in the sense of a mistake of fact or law. Nor, in my view, is it warrant to correct a pure omission, being something that the adjudicator intended to include or take account of but which he has wholly omitted in reaching his decision."

30. In O'Donnell Developments Ltd v Build Ability Ltd [2009] EWHC 3388 (TCC), Ramsey J. considered the jurisdictional aspects of a decision by an adjudicator to correct a decision (this was a case concerning an implied power to correct). He said at paragraph [29]:

> "On this application for summary judgment there is a threshold question as to how far the court can interfere with an adjudicator's exercise of his power under the slip rule. If an adjudicator has jurisdiction under the slip rule, to what extent can the court review the exercise of that jurisdiction by the adjudicator? This did not arise in Bloor and was not argued in YCMS."

He then said, at paragraphs [35] to [39]:

> "35. …..the distinction between disputes as to the jurisdiction of an adjudicator and disputes as to ways in which that jurisdiction should be exercised is not an easy one to draw as the decision in Lesotho Highlands shows. This can be illustrated in the case of the slip rule as follows. First if the adjudicator were to exercise a slip rule when there was no express or implied slip rule, that would clearly be a decision that was outside his jurisdiction. Secondly, if the adjudicator is asked by one party to correct a slip and he accepts that an error has been made within the slip rule then if the adjudicator makes an error of fact or law in so doing, I consider that such an error does not take the exercise of the slip rule outside his jurisdiction. Finally, if the adjudicator is asked by one party to correct a slip which the other party agrees is a slip within the slip rule but in operating the slip rule he makes [an] error of fact or law, then I do not consider that the court can interfere in that decision.
>
> "36. The dividing line between exercising a wrong jurisdiction which does not exist and exercising a jurisdiction which does exist, wrongly is difficult. Each case obviously has to be considered on its facts to decide whether it is a decision within or outside the adjudicator's jurisdiction.
>
> "37. As Dyson J. said in Bouygues at [36]: '…in deciding whether the adjudicator has decided the wrong question rather than given a wrong answer to the right question, the court should bear in mind that the speedy nature of the adjudication process means that mistakes will inevitably occur, and, in my view, it should guard against characterising a mistaken answer

> to an issue that lies within the scope of the reference as excess of jurisdiction.'
>
> "38. In considering whether the adjudicator was acting within his jurisdiction in operating the slip rule the court should similarly guard against characterising a mistaken application of the slip rule as a decision in excess of, and therefore, outside his jurisdiction.
>
> "39. In the present case it is accepted by [the Defendant] that the slip rule is an implied term of the Sub-Contract. The Adjudicator was asked to correct a slip and accepted that he had made an error within the slip rule. In such circumstances I do not consider that the court can or should interfere with the exercise of the adjudicator's powers within his jurisdiction. To do so would be to seek to interfere in a case where he has answered the right question and like Bouygues his decision will be temporarily binding, whether he was right or wrong in the answer he gave."

31. Finally, I refer to the decision of Akenhead J. in Rok Building Ltd v Celtic Composting Systems Ltd [2009] EWHC 2664 (TCC). He considered the decision of HHJ Humphrey LLoyd Q.C. in David McLean Housing Contractors Ltd v Swansea Housing Association Ltd and said, at paragraph [20]:

> "One can draw from the David McLean decision the propositions that the Court must interpret adjudicators' decisions not only from the words used by the adjudicator but also in the context of the dispute which was referred to adjudication."

The Claimants' Position

32. The Claimants submit:

> (1) The Adjudicator was entitled to correct his decision to remove a clerical or typographical error arising by accident or omission by virtue of paragraph 22A(1) of the Scheme;

(2) The distinction to be drawn under this provision is the same as that set out in the previous authorities. The Adjudicator was entitled to correct a decision so as to give effect to his original intentions, but not to make changes to give effect to second thoughts and intentions.

(3) The correction in this case was plainly made to reflect the Adjudicator's original intentions. In his Original Decision, the Adjudicator deducted his valuation of the contra charges of £246,886.37 from a figure which already included a deduction of contra charges in the sum of £783,924.60, so that the effect of the calculation was to deduct contra charges of £1,030,810.97. Thus, the Original Decision did not give effect to the Adjudicator's clearly expressed determination of the amount that should be deducted for contra charges.

(4) It is clear that the Adjudicator made an error of calculation, which he was entitled to correct under paragraph 22A of the Scheme. The Adjudicator did not seek to amend his valuation of the variations or the contra charges, but simply corrected the calculation to remove the error described above.

(5) The Adjudicator corrected the decision expressly "as a slip" and issued the corrected version of his decision as an Amended Decision.

(6) It is clear that the Adjudicator considered that he had made a slip and that his amended decision was the correction of a slip. The Adjudicator recorded that whether or not he was entitled to correct the

decision in this way was not for him to decide, since the Adjudicator did not have jurisdiction to determine whether his decisions were enforceable. That is a matter for the Court.

(7) Paragraph 22A(4) of the Scheme expressly provides that any correction of a decision forms part of the decision. Therefore, by paragraph 23(2) of the Scheme, the Defendant is obliged to comply with the Amended Decision.

The Defendant's Position

33. The Defendant submits:

(1) An adjudicator is entitled to correct the written decision document to ensure that it accurately records what he in fact decided. He cannot, however, go back and decide something new or change a decision he consciously made.

(2) The Defendant opposes enforcement of the Corrected Decision on the short ground that the amendments comprehended by the Corrected Decision go beyond those permitted by the "slip rule" incorporated at paragraph 22A of the Scheme for Construction Contracts, because they were not made "so as to remove a clerical or typographical error arising by accident or omission". Rather:

(a) The Adjudicator did not consider the need to add back in to his payment calculations the amounts previously deducted for contra-charges and therefore had formed no intention as to the need to do so. His was not a patent error in the Original

Decision, and the amendments did not serve to give effect to his "first intentions" because he had none in this respect.

(b) He did, however, consider (apparently at some length) which figure to take as a starting point for his calculation of the payment due to Axis. That was a matter upon which he had a range of submissions before him and in respect of which, albeit in less than perfectly clear terms, he invited further submission. The Adjudicator formed an intention, on the material before him, to take the figure of £19,282,680.04, and that was duly enshrined in his Original Decision. That appears to have been a mistake of fact, but not one that he was entitled to correct. To do so would be to seek to give effect to "second thoughts and intentions".

Decision

34. On one view, applying the reasoning of Ramsey J. in the passage from O'Donnell Developments Ltd v Build Ability Ltd set out at paragraph 30 above, the answer to this application might be said to be simply that if the Adjudicator was wrong in deciding that the error was one which could be corrected under the slip rule, that was an error of law of the type which adjudicators can make without rendering the Decision unenforceable.

35. However, the Claimants do not suggest that I should adopt that simple route. Nevertheless, it is clear from the authorities that I should start from the position that decisions of adjudicators are to be enforced save in very exceptional cases.

36. In my view, the important starting point is to consider the dispute which had been referred to the Adjudicator, and the dispute which he considered that he had to decide. I accept and apply what Akenhead J. said in Rok Building Ltd v Celtic Composting Systems Ltd, set out at paragraph 31 above, namely that in interpreting an adjudicator's decision the Court should consider the context of the dispute which was referred to adjudication.

37. I have set out at paragraph 7 above part of the Referral Notice, which makes clear that the principal elements of the dispute which the Adjudicator had to resolve were (a) what was the appropriate value of the variations and (b) what if any contra-charges should be deducted. Once those disputes had been resolved the amount, if any, payable by the Defendant to the Claimants should follow as a matter of arithmetic or mechanics.

38. That the Adjudicator so understood his task is clear in my view from the structure of his Decision, which deals only with those two topics in any detail.

39. There is no suggestion that in reaching his decision on those two topics the Adjudicator made any error.

40. What is clear from the context of the dispute before him was that once the second limb (as to contra-charges) had been decided by him, the arithmetic had to be carried out to give effect to that part of his decision.

41. In my judgment the error he made in incorrectly over-deducting for contra-charges was the sort of error falling within the statutory slip rule as construed by Lady Wolffe in NKT Cables A/S v SP Power Systems Ltd, namely "…an

arithmetical error in adding or subtracting sums [or] …. a slip in carrying over a calculation from one part of the decision to another".

42. Accordingly, I accept the Claimants' submissions as set out at paragraph 32 above, and will give summary judgment for the principal sum of £643,072.89.

43. What appears to be novel in this case is whether the Adjudicator was right to then continue not only to correct his decision in respect of that principal sum, but also to go further and to (a) award interest; and (b) to reverse his order as to payment of his fees.

44. Whilst this is not a situation which, to my understanding, has ever been considered by the courts in respect of an adjudicator's decision, after the oral argument in this case had been concluded, Mr. Chennells very properly drew to my attention the decision of Langley J. in Gannet Shipping Ltd v Eastrade Commodities Ltd [2001] All ER (D) 74 (Dec).

45. Gannet Shipping was a case concerning the correction of an arbitration award under Section 57(3)(a) of the Arbitration Act 1996 and Rule 26(A) of the L.M.A.A. Terms (1997).

46. Section 57 of the Act permits an arbitral tribunal to "correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission…."

47. Rule 26(A) of the LMAA Terms provided:

> "In addition to the powers set out in Section 57 of the Act, the tribunal shall have the following powers to correct an award or to make an additional award:

> "(i) The Tribunal may on its own initiative or on the application of a party correct any accidental mistake omission or error of calculation in its award …."

48. The facts of that case bore some similarity to the present case in that once certain clerical errors had been corrected, the party "winning" the arbitration could be seen in a different light. The arbitrator said this:

> "The kernel of the matter is that a clerical or arithmetical error has been made, which all agree can be corrected by an Amending Award, but had that error not been made my decision as to costs may have been different. There is no question that an arbitrator has, in principle, no entitlement to review a decision. However, when the arbitrator's decision on a particular point, in this case liability for costs, is based on an admitted mistake, then surely as a matter of common sense the arbitrator must have power to review his decision in the light of that mistake. This is no more or less than ensuring that justice is done, and the real issue here is that my determination of liability for costs was based on a perceived fact (the amount of the money awarded to the Owners) which turns out to be incorrect.
>
> "From several points of view I think that it is right and proper for me to assume jurisdiction to review this matter. In the first place, the parties contracted to refer disputes to arbitration, which has been described as expressing the preference to be judged by their peers rather than in the Courts. In this case a purely arithmetic error by the Umpire has led to a conclusion as to liability for costs which might have been different had the true figures been known at the time, and I think that the parties' decision to refer disputes to arbitration can logically be extended to include this dispute. Secondly, the principles of equity and natural justice demand that where a mistake has been made upon which other decisions may have relied, the correction of that mistake should be accompanied by the opportunity to review the other decisions in case they should also be corrected."

49. Langley J. upheld the Amended Award, saying at paragraph [24] of his judgment.

> "The authorities draw distinctions between errors affecting the expression of the tribunal's thought (which can be corrected) and errors in the tribunal's thought process (which cannot) and to not permitting corrections to reflect "second thoughts". I do not think such distinctions are material in the present context. Granted an error in the amount of an Award was properly corrected, I do not think these principles preclude the tribunal from addressing the question whether the corrected figure may reveal other errors. If an error properly falls to be corrected, how it is to

> be corrected and its consequences is always likely to involve some new consideration..”

50. Although that decision was a decision in respect of an arbitration award, and not an adjudication, and the issue as to whether there was an arithmetical error which could be corrected either under the 1996 Act or the LMAA Terms, those distinctions do not appear to me to be material: those questions concern whether there was an arithmetical or other error which could be corrected under the applicable legislation and arbitral rules. Once the door had been opened to correct that initial error, then the effect of that decision permitted and indeed, in the interests of justice, required, that any corrections consequent upon the correction of that gateway error to be made.

51. I see no relevant distinction between that situation under arbitration law and the present situation where the correction of what I have called the “gateway error” required consequential corrections to be made.

52. Moreover, in my view once one element of a decision has been corrected, then any other changes consequential upon that correction should be made, since otherwise the decision is likely to be internally inconsistent.

53. Accordingly, in my judgment the Adjudicator acted within his jurisdiction in awarding interest, and there will be summary judgment for the sum of £11,046.76 in addition to the principal sum.

54. There is also a claim for interest upon the total sum of £654,119.65, but I have not yet heard submissions in that respect.

55. As to the Adjudicator’s fees, these have been paid to the Adjudicator, so no order is necessary in that regard.