

Building Blocks

June 2010

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KEY CONTACT



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Welcome to the June 2010 edition of "Building Blocks" – the quarterly construction and engineering law update from Charles Russell's Construction and Engineering team. We aim to profile legal developments and case law that may affect your business, or that of your clients. In this edition we consider:

- **Statutory demands and adjudication** – Shaw v MFP Foundations & Piling Limited (2010)
- **LAD's and termination** – (1) Selby Hall (2) Philip Shivers v Jan Van Der Heiden (2010)
- **Pay when paid clauses** - William Hare Limited v Shepherd Construction Limited (2009)
- **Ad hoc v Institutional Arbitration** – a paper I recently gave at an ICC arbitration conference in Manama, Bahrain.
- In our **"Foundations"** series of articles we give an overview profile of corporate insolvency procedures.

The construction industry continues to trade in very difficult circumstances as a consequence of the UK's ongoing economic difficulties. The inevitable capital programme cuts of the new Coalition Government will hit the industry further - we are clearly not yet out of the woods despite being technically out of the recession. In this issue, we therefore look at some cases dealing with insolvency issues and also remind you of the insolvency procedures in our 'Foundations' article. On the positive side, we are envisaging that the Coalition Government will bring into force the Local Democracy, Economic Development and Construction Act 2009 (which makes amendments to the existing "Construction Act" 1996) and this may help to speed up the resolution of issues arising during the currency of construction contracts, particularly in relation to availability of adjudication, suspension rights and payment generally.

Further afield, I spent a couple of weeks in May visiting Bahrain and Syria to look at opportunities in the middle east region and speak at a number of international construction law conferences. As mentioned in previous editions, Charles Russell LLP opened an office in Bahrain in 2007 which has gone from strength to strength since then. Whilst the middle east is clearly no longer the "red hot market" it was, there are still opportunities for UK consultants and companies prepared to back a longer term strategic view.

Closer to home again, our next series of seminars will be held in late June and the first half of July. The same seminars will be held in each of our London, Guildford,

FORTHCOMING SEMINARS

Our Summer Construction Law Update Seminar is taking place at 4 of our regional offices. Please click the links below for more information.

[24 June 2010 – Cheltenham](#)

[8 July 2010 – London](#)

[13 July 2010 – Guildford](#)

[15 July 2010 – Oxford](#)

Cheltenham and Oxford offices. Topics to be covered include:

- **Adjudication update** - the latest case law explained, including Yuanda (UK) Co Ltd v WW Gear Construction Ltd.
- **Statutory developments and sustainability** - What does the new Coalition Government propose for construction? What is happening about the new "Construction Act"?
- **Concurrent delay in construction projects** - what exactly is the law now?

Yours sincerely

David Savage

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LINKS TO THIS MONTHS ARTICLES

Case Update

There have been a number of interesting cases over the last few months and we review some of the most significant ones below:

Statutory Demands and adjudication – Shaw v MFP Foundations & Piling Limited (2010)

Roberta Vella looks at whether the court will set aside a statutory demand for a debt arising as a result of an adjudicator's decision in circumstances where there is a valid cross claim. [Click here](#) for more information.

Liquidated and Ascertained Damages following termination (1) Selby Hall (2) Philip Shivers v Jan Van Der Heiden (2010)

Kimberley Eyssell considers the decision of His Honour Judge Coulson QC, which held that an Employer could recover LAD's from a Contractor for the period after termination until Practical Completion of the works by a third party contractor. [Click here](#) for more information.

Mind Your Language - William Hare Limited v Shepherd Construction Limited [2009]

The first instance decision on this case, concerning the enforceability of pay when paid clauses was reviewed in the December 2009 edition of Building Blocks. The matter has since been referred to the Court of Appeal and Patricia Nathan-Amisssah considers this decision and the importance of careful drafting. [Click here](#) for more information.

Ad Hoc v Institutional Arbitration

Arbitration is the preferred form of dispute resolution in relation to cross border disputes and international construction contracts, but what form do these arbitrations take? David Savage considers the pros and cons of ad hoc versus institutional arbitration. [Click here](#) for more information.

"Foundations" – Corporate Insolvency – an overview of procedure

As a sector, the construction industry has a poor reputation for insolvency. There are a number of contributory factors for this unfortunate phenomenon, including the traditionally low profit margins, long supply chains and inherent risk involved in any project. Roger Elford outlines the aims of the corporate insolvency regime and the various forms of corporate insolvency that may be encountered. [Click here](#) for more information.

More information

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