

UPDATE

Deconstructing construction contracts

Update prepared by Georgina Cook (Head of Commercial Property, Jersey)

In the recent decision of *ROK Construction Limited v Angel Fish Limited*, the Jersey Court considered whether a building contract dispute should be referred to arbitration.

Jersey developers regularly use standard form JCT building contracts and issue out the pro-forma contract and the usual Jersey amendments. However, whilst this process may be familiar, a recent case shows why it is important to check such agreements carefully before execution.

ROK Construction Limited v Angel Fish Limited ([2018] JRC189) was recently brought before the Jersey Court because a dispute had arisen between the parties to a building contract but a preliminary issue had to be decided as to whether that dispute should be referred to arbitration or not.

The usual arbitration clause in the parties' JCT contract had left the 'apply/do not apply' option unaltered. However, the guidance said, 'if neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 8 and clauses 9.3 to 9.8 apply.'

ROK Construction Limited's lawyer argued that the standard Jersey amendment to the JCT contract incorporated the arbitration provision but the Court held that when read as a whole, the JCT contract and the addendum did not clearly have the effect of the addendum superseding the requirement that the parties must elect arbitration.

The matter could not be determined by applying commercial sense either as a positive election for arbitration to apply is necessary.

The Court concluded that the parties needed to **clearly elect** to refer a matter to arbitration. Considering the JCT contract and the addendum as a whole, it could not conclude that the parties had elected to submit all disputes to arbitration.

What can we learn from this?

When entering in to a new building contract:

- Take care to populate all information that is required in a standard form JCT contract. As this case shows, failure to do so can result in a party not having the contractual terms that it may have intended/desired.
- Prepare each building contract and any Jersey addendum to it on a case-by-case basis. Don't simply rely on the last one that you did – each development is likely to be different and any errors that you had in your last contract will be replicated again and thus inflate your risk.
- Read the documents before signing them. Think about applying the '4-eyes' principle: have a colleague or some other trusted person read it through too.
- Consider taking legal advice before signing the contract. Time spent giving proper consideration to a contract before signing will likely save considerable expense later if it is found to have errors or omissions.

Contacts



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