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**AL NAHDA INSULATION CONTRACTING LLC & ANOR v TREMCO ILLBRUCK EXPORT LTD & ANOR (2017)**

**QBD (TCC) (Stephen Furst QC) 06/02/2017**

CIVIL PROCEDURE - CONSTRUCTION LAW

AMENDMENTS : CAR PARKS : CONSTRUCTION MATERIALS : DELAY : FITNESS FOR PURPOSE :  
PARTICULARS OF CLAIM : REMEDIAL WORKS

**Proposed amendments to particulars of claim in proceedings disputing the adequacy of a construction material supplied by the defendants were not allowed. The application had been made late and the amendments risked disrupting the upcoming trial.**

The claimants applied to amend their particulars of claim in proceedings regarding the quality of a material supplied by the defendants for the surfacing of car parks.

The main contractor employed to surface three car parks in a Dubai shopping mall had sub-contracted the works to the claimants, who had sub-sub-contracted the works to the defendants. A year after the works were completed, the top layer of the material used to surface the car parks began to deteriorate. Remedial works were carried out on level 5 of one of the car parks that involved removing the material and reapplying it. The remedial works were not successful. The claimants alleged that the material provided by the defendants was not fit for purpose. Their pleadings relied on the testing of a sample of the material which had revealed that the material's strength was 25% of what it should have been. Their proposed amendments alleged that there was an agreement with the defendants regarding the remedial works and that had they been successful that same remedial method would have been applied to the other car parks. The trial was due to begin in a few months.

HELD: The application was late, if not very late. If the amendments were allowed, it would be difficult to know whether the trial date could be kept. The critical question was why the application had been made so late. No explanation was provided or evidence put forward. It was necessary to examine the proposed amendments. They alleged that in breach of the agreements between the parties, the defendants had failed to supply the material with the right specification. The claimants' sample had been obtained before the remedial works had been carried out, and so it was difficult to see how that sample could prove that the material subsequently supplied was probative. The claimants sought to link the need to replace the material with the failure of the level 5 works. That failed on causation. Failure of the level 5 works resulted in the rejection of applying the remedial scheme to the other car park areas. The need to replace the entire material arose from its inadequacies; thus the claimants' proposed amendments lacked particularity and were bound to fail. Allowing the amendments would also pose difficulties for the quantum experts. They would have to work out how much the level 5 works would have cost if they had been applied to all three car parks and the cost of replacing the material. It would not be simple as different remedial works were carried out in different areas of level 5. It was unlikely that that would be completed before trial, causing significant disruption to the trial. Only limited amendments that were not objected to which provided more detail on the remedial works were allowed.

Judgment accordingly

Counsel:

For the claimants: Luke Wygas

For the defendants: Neil Moody QC, Timothy Killen

Solicitors:

For the claimants: Chadbourne & Parke (London) LLP

For the defendants: Kennedys Law LLP

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