

JUDGMENT: MR JUSTICE JACKSON: TCC. 10th January 2007.

1. This judgment is in six parts, namely Part 1 – Introduction; Part 2 – The Facts; Part 3 – The Present Proceedings; Part 4 – The Adjudicator's Jurisdiction; Part 5 – Compliance with the Adjudicator's Decision; Part 6 – What relief (if any) should this court grant to Multiplex?

Part 1: Introduction

2. This is an application for summary judgment to enforce an adjudicator's decision. The claimant in these proceedings is Multiplex Constructions (UK) Limited, whom I shall refer as "Multiplex". The defendant is Mott MacDonald Limited, to whom I shall refer as "Mott".
3. This litigation is one of a number of actions arising out of the construction of the New National Stadium at Wembley. Mott, acting in conjunction with related companies, is the structural engineer for the project. Multiplex is the main contractor. The employer is Wembley National Stadium Limited, who whom I shall refer as "WNSL".
4. The adjudication decision, which is the subject of this action, is dated 20th November 2006. The entire document prepared by the adjudicator comprises 134 paragraphs. The adjudicator's actual decision is set out in paragraphs 129 to 132. For the avoidance of ambiguity (although at the risk of inelegance) I shall refer to the entire document prepared by the adjudicator as "the award". I shall refer to paragraphs 129 to 132 as "the decision".
5. After these introductory remarks I must now turn to the facts.

Part 2: The Facts

6. Mott has been engaged upon engineering design work for Wembley Stadium since May 1998. On 6th April 1999 Mott entered into a consultancy agreement with WNSL for the provision of professional services in relation to the design and construction of the stadium.
7. On 26th September 2002 WNSL engaged Multiplex as main contractor to design and construct Wembley Stadium. In those circumstances it became appropriate for Multiplex to employ Mott so that Mott could continue to provide professional services in connection with the project, even though, for the most part, Mott would now be acting as consultant for Multiplex rather than as consultant for WNSL.
8. On 26th September 2002 Multiplex, WNSL and Mott entered into two written novation agreements, one relating to the provision of civil and structural engineering services and one relating to the provision of mechanical and electrical services. This court is concerned only with the first of those two agreements. Accordingly, any reference in this judgment to "the novation agreement" is a reference to the novation agreement for civil and structural engineering services.
9. The novation agreement provided that the majority of the civil and structural engineering services which Mott was performing in respect of the project would be novated to Multiplex. These were referred to as "the novation services". In respect of the novation services Multiplex became Mott's employer in place of WNSL. The novation agreement also provided that certain limited services being performed by Mott would not be novated. These were referred to as "the retained services". WNSL remained as Mott's employer in respect of the retained services.
10. Schedule 4B to the novation agreement set out the parties obligations in respect of the novated services in some detail. References in this judgment to "Schedule 4B" are references to Schedule 4B to the novation agreement.
11. Clause 13.1 of Schedule 4B provides as follows:
"The consultant shall retain in complete and proper form for the entirety of the period referred to in Clause 12.1 all pertinent records relating to the Services including (but without limitation) all records relating to the costs associated with the performance of the of the Services, until the discharge of his duties under this Agreement. The Client, the Client Representative, and any authorised representative of the Client shall, at all reasonable times, be permitted to have access to such records. Copies of the records shall be delivered by the Consultant free of charge to an office of the Client or the Client Representative at the time and in the manner directed by the Client or the Client Representative. To the extent that any calculation, drawing, document or other record of the Consultant is to be created and/or maintained on a computer or other electronic storage device, the Consultant shall comply with the procedure notified to it by the Client or the Client Representative for back up and for copies of such calculations, drawings, documents and other records to be stored at a place other than is project office."
12. Clause 24 of Schedule 4B sets out the dispute resolution machinery. Clause 24 includes the following provisions:
"24.2 If a dispute or difference has under this Agreement, any party ("the Referring Party") may give notice ("the Adjudication Notice") to the other party or parties to this Agreement (individually the "Referred Party"), notifying the Referring Party's intention that the dispute or difference be referred to adjudication under this Agreement. The Adjudication Notice shall set out the nature and a brief description of the dispute or difference, details of where, when and how the dispute or difference has arisen and the redress being sought...
24.7 Where a dispute or difference has been referred to an adjudicator, the decision of the adjudicator shall be binding on the parties until the dispute is finally determined by agreement, or arbitration. The adjudicator's decision shall be enforceable by the English courts as a contractual obligation under this Agreement and not as an arbitral award. Notwithstanding any referral to adjudication, the parties will perform and continue to

perform this Agreement before, during and after such adjudication in accordance with the terms of this Agreement, any adjudicator's decision, and any court order enforcing such decision."

13. During the summer of 2006 Multiplex wished to exercise its right of access to records as set out in clause 13.1 of Schedule 4B. In a letter to Mott dated 30th August 2006 Multiplex set out the terms of clause 13.1 and then continued as follows:

"The Conditions of Contract does not define "records". In the context of the Project, Multiplex believe that the records means: all literature, drawings, diagrams, designs, plans, details, specifications, schedules, reports, calculations, cost plans, budgets, software, computer storage discs, computer printouts, data files, databases, source codes, estimates, models, photographs, articles or works prepared by Mott, its servants or agents, and/or received by Motts in connection with the Project.

Accordingly, pursuant to Clause 13.1 of the conditions of contract, we require Motts by 5pm on 5th September 2006 to:

- 1. grant Multiplex access without charge to the records set out below; and*
- 2. set out in writing its proposal for granting Multiplex access to these records.*

Document Request.

In respect of the Services carried out by Motts from 20th May 1998 to 28th September 2002, Multiplex requests that they are given access to the following documents:

- 1. all records (as defined above) recording the discussion with WNSL relating to the role of Motts;*
- 2. all records (as defined above) detailing any collaboration with World Stadium Team ("WST") in order to make an initial recommendation to WNSL on the technical viability of the Works;*
- 3. all records (as defined above) detailing the studies undertaken by Motts in order to verify the feasibility of WNSL's requirements;*
- 4. all records (as defined above) detailing the review undertaken by Motts with WNSL in relation to the proposed design and construction approaches to the Project, and the cost implications;*
- 5. all records (as defined above) which detail preliminary information to enable WST to prepare its outlined proposals and for Messrs. Franklin and Andrew to prepare the outline cost plan for the Project;*
- 6. all records (as defined above) which detail the information provided to WNSL to enable their quantity surveyors to undertake an initial cost estimate of the design solutions for the Project, together with any presentation materials given to WNSL;*
- 7. all records (as defined above) detailing liaising with WNSL to agree a programme for the whole of the design and construction of the Works;*
- 8. all records (as defined above) detailing a deliverables list of all drawings, specifications and documents that needed to be produced at the Scheme Design Scheme, including any agreement with WST as to the sequence of exchange of information to ensure the civil and structural designs are integrated and co-ordinated with the architectural, electrical and mechanical elements;*
- 9. all records (as defined above) detailing the work done by Motts in preparing specifications for the Works;*
- 10. all records (as defined above) detailing the work done by Motts in co-ordinating the design of the works into the overall design; and*
- 11. all records (as defined above) between Motts and WNSL during the period February 2002 to September 2002."*

14. By letter dated 5th September 2006 Mott replied to Multiplex as follows:

"You are correct in that the Novation Agreement does not expressly define "pertinent records". By its very nature, a record either records or is intended to record an event or occurrence. The definition that you have sought to apply is too wide as are the specific requests that you have listed at items 1-11 of your letter.

Subject to the reservations contained in this letter, we are happy to grant you access to appropriate records and will seek to locate any such records falling within the itemised paragraphs of your letter, insofar as such documents are in fact records. However, many such records will in fact have been archived and will need to be retrieved.

You will also appreciate that there may be records that we are contractually obliged to keep confidential to WNSL and which cannot be produced to you without permission of WNSL. Our position in relation to those records must remain reserved. Once we have located any pertinent records falling within the scope of your request, and have identified any which may be confidential to WNSL, we would be happy to seek WNSL's permission for them to be disclosed to you, if that is what you wish. You may feel it would be better for you make such an approach to WNSL yourself in this regard, but we shall await confirmation of your preference.

To comply with your request we therefore propose the following:

- 1. MM will retrieve from archive and assemble packages of records pertinent to the performance of our services and falling within the scope of your request;*

2. *To the extent that any such records may be confidential to WNSL, we shall await your confirmation as to whether you wish us to contact WNSL to obtain permission for their release to you or whether you intend to approach WNSL directly. In any event, WNSL's representative can be invited to attend and review such records and decide whether to grant written approval for the disclosure of those records to MPX.*
3. *Thereafter, MM will grant access for MPX to inspect and will, if requested, provide MPX with a copy of any record falling within the scope of paragraph 1 above. Insofar as any such records fall within the scope of paragraph 2 above, this can only occur upon receipt of WNSL's written approval to their disclosure.*

Clearly this task will take some considerable time and will require input from senior members of our team who have the knowledge and understanding of the records you require. As these are the same individuals who are critical to your programme requirements, we propose to undertake this work to a programme that we hope can be agreed and achieved without affecting critical elements of our work.

We are unable to confirm time scales at this time until we have reviewed the quantum of records available following their retrieval from archives, but in the meantime we seek your acceptance to our proposal."

15. Thereafter, the extent of Multiplex's entitlement under clause 13.1 of Schedule 4B was debated in correspondence. Although Mott disputed Multiplex's interpretation of clause 13.1, Mott declined to put forward any alternative interpretation of that provision.
16. By early October 2006 Multiplex took the view that disputes had arisen which were referable to adjudication. On 4th October Multiplex served an adjudication notice on Mott. In that notice Multiplex set out the history of events and the relevant contractual provisions. Multiplex then asserted that four disputes had arisen between the parties. These were:
 - (i) a dispute or difference between Multiplex and Mott Macdonald as to the meaning to be given to the words "all records pertinent to the Services" within clause 13.1;
 - (ii) a dispute or difference between Multiplex and Mott Macdonald concerning the extent to which the series of specific of document requests (numbered 1 to 11) fall within the words "all records pertinent to the Services";
 - (iii) a dispute or difference between Multiplex and Mott Macdonald regarding the meaning of the words "at all reasonable times" within clause 13.1;
 - (iv) a dispute or difference between Multiplex and Mott Macdonald regarding the extent to which (if any) such confidentiality obligations as Mott Macdonald may owe to WNSL preclude provision of "all pertinent records relating to the Services" by Mott Macdonald to Multiplex.
17. Multiplex claimed relief in respect of all four disputes. In respect of the first dispute Multiplex claimed the following relief:

"A Declaration (and/or Decision) that Multiplex was correct in its definition of "all records pertinent to the Services" set out in its letter dated 30th August 2006 and/or a Declaration (and/or Decision) as to the true meaning to be given to the words "all records pertinent to the Services" (Clause 13.1 of the Conditions of Contract)."
18. Mr Stephen York, a solicitor with long experience in construction law was appointed adjudicator. The adjudication duly proceeded. There was correspondence between the parties' representatives and the adjudicator. An informal meeting was held on 6th November 2006. A more formal hearing took place before the adjudicator on 13th November at which Mr Simon Hughes represented Multiplex and Mr Robert Akenhead QC represented Mott.
19. It was Mott's case in the adjudication that for a number of reasons the adjudicator lacked jurisdiction and, in any event, that Multiplex's claim should be dismissed. Without prejudice to all those contentions, however, Mott asserted that it was seeking to comply with its obligations under clause 13.1 as Mott understood those obligations.
20. The adjudicator gave careful consideration to the evidence and arguments which had been placed before him. On 20th November 2006 the adjudicator issued his written award. The adjudicator set out the factual background and summarised the arguments on behalf of each party. The adjudicator concluded that he did have jurisdiction to decide the disputes identified in Multiplex's adjudication notice. In relation to the first dispute, the adjudicator's conclusions are set out in paragraphs 90 and 92 of his award as follows:

"90. I therefore interpret the words "all pertinent records relating to the Services" in Clause 13.1 to mean all files and documents (paper or electronic) and/or computer data files which have a dependent relationship with the Services and are suitable in nature or character to preserve knowledge or information accumulated by the persons within Motts (or their sub-consultants) engaged directly on the Project. It follows that I reject the definition advanced by Multiplex (transposed from the term "Data" in the Design and Construct Contract), even though some documents described by that definition would fall within this definition, and I reject the very narrow definition advanced by Motts...

92. Applying this definition to the various descriptions of documents in contention, the following are, for example, records provided the conditions of "pertinent" and "relating to the Services" are met: a collection of literature in a library of technical knowledge justifying and explaining the design; drawings, diagrams, designs, plans, details, specifications, schedules and calculations; cost plans and budgets; programmes; printouts and computer data files and databases; models for all structural elements within the Stadium and for the loadings imposed by any one element on the rest of the structure, together with the cumulative (or combined) loads imposed by

various elements at various significant points within the structure; minutes of meetings and e-mails. These descriptions would apply to both paper and electronic records."

21. The adjudicator's formal decision in respect of the four disputes referred to him was set out as follows in paragraphs 129 to 132:

"129. That the true meaning to be given to the words "all records pertinent to the Services" (Clause 13.1 of the Conditions of Contract) is: all files and documents (paper or electronic) and/or computer data files which have a dependent relationship with the Services and are suitable in nature or character to preserve knowledge or information accumulated by the persons within Motts (and/or its sub-consultants) engaged directly on the Project.

130. That the series of specific document requests (numbered 1 to 11) set out in the letter sent by Multiplex to Motts on 30th August 2006 fall within the words "all records pertinent to the Services" (Clause 13.1 of the Conditions of Contract) as defined above.

131. In respect of such specific document requests, that there are no relevant confidentiality obligations that Motts owe to WNSL so as to preclude the provision of "all pertinent records relating to the Services" by Motts to Multiplex.

132. Motts shall provide access to the said records within 7 days of the date of this decision and Motts shall then deliver copies of records as Multiplex may direct."

22. Both parties gave consideration to the adjudicator's award. On 27th November 2006 Fishburns, who are Motts' solicitors, wrote as follows to Clifford Chance, who are Multiplex's solicitors:

"We refer to the decision made by the Adjudicator, Stephen York.

We have to record that we do find the Adjudicator's decision to be extremely confusing and provides little or not practical guidance as to how compliance with his decision may be achieved. Nevertheless, MM is doing its best within the time available to identify the pertinent records which you are entitled to access, and intends to provide that access in a practical and pragmatic way.

Insofar as the Adjudicator has called for documents that are outside the definition of "records" that you put forward in your letter of 30th August 2006, MM must reserve its position and its right to argue that the Adjudicator had no jurisdiction to so decide.

Notwithstanding and entirely without prejudice to the above MM will be providing access to a substantial amount of documentation tomorrow at 12 noon at its Croydon office at Mott MacDonald House, Sydenham Road, Croydon. MM's position remains fully reserved, including as to whether all documents to which access will be given are in fact pertinent records relating to the Services and/or whether they fall within the categories of records to which access was sought by your client or has been directed."

23. Subsequently, arrangements were made for Multiplex to inspect the documents which Mott was making available. Mr Jourdain Edwards, a representative of Multiplex, attended Mott's offices in Croydon on 1st December 2006 for that purpose.

24. Multiplex took the view that the documents made available by Mott were insufficient and that Mott had failed to comply with the adjudication decision. In those circumstances, Multiplex commenced the present proceedings.

Part 3: The Present Proceedings

25. By a claim form issued in the Technology and Construction Court on 11th December 2006 Multiplex applied for orders enforcing the adjudicator's decision. The substantive relief claimed by Multiplex was formulated as follows in the particulars of claim accompanying the claim form:

"AND the Claimant claims:

(i) A Declaration that the Decision of the Adjudicator is binding upon Mott Macdonald and that Mott Macdonald are contractually obliged to render full performance forthwith (or within such time as the Court shall determine).

(ii) Specific performance ordering Mott Macdonald's compliance with the Decision in accordance with effect of Clause 24.7.

Alternatively:

(iii) An injunction ordering and/or requiring Mott Macdonald to comply with the Decision in accordance with the effect of Clause 24.7.

Alternatively:

(iv) Damages together with interest on those damages under section 35A of the Supreme Court Act 1981."

26. At the same time as issuing its claim form Multiplex also applied for summary judgment on the whole its claim pursuant to CPR Part 24.

27. It is the practice of this court to deal expeditiously with all claims for adjudication enforcement in accordance with the procedures set out in section 9 of the second edition of the Technology and Construction Court Guide. Accordingly, on 11th December 2006 I gave directions for the service of evidence by both parties and for the hearing of Multiplex's application as vacation business.

28. Both parties have progressed this action swiftly despite the intervention of the Christmas and New Year holiday. Multiplex's supporting evidence, namely a witness statement by Mr Panayides (a partner of Clifford Chance), was served on 11th December 2006 at the same time as the claim form. Mott's evidence in response, namely a witness statement of Mr Hooper (Mott's project manager for Wembley Stadium), was served on 29th December 2006. Multiplex's evidence in reply, namely a second witness statement of Mr Panayides, was served on 4th January 2007. That concluded the exchange of evidence as ordered by this court.
29. In addition to preparing their evidence the parties also agreed that Multiplex should make a further inspection of the documents disclosed. On 13th December 2002 Mr Howard Gettins, a structural engineer retained as consultant by Multiplex, attended Mott's offices for that purpose.
30. In the run up to the hearing both parties served supplementary evidence. On 8th January 2007 Mott served a second witness of Mr Hooper. Late in the evening of 8th January Multiplex served a witness statement made by Mr Gettins concerning his recent visit to Mott's offices.
31. Thus, the battle lines were drawn. The hearing of Multiplex's application for summary judgment commenced yesterday morning, namely on 9th January. Mr Simon Hughes represents Multiplex, Mr Robert Akenhead QC and Mr Nicholas Collings represent Mott.
32. In their submissions counsel have addressed two discrete issues. One issue is whether the adjudicator had jurisdiction to reach the decision that he did. The other issue is whether, as a matter of fact, there has been compliance with the adjudicator's decision. Mr Akenhead submits that the first issue does not arise for decision in this court because Mott, whilst disputing the adjudicator's jurisdiction, has in fact fully complied with the adjudicator's decision.
33. I have come to the conclusion that, tempting though it is to do so, I cannot avoid grappling with the jurisdiction issue. Multiplex does not accept that Mott has complied with the adjudicator's decision. Mott does not accept that the adjudicator's decision was within his jurisdiction. Mott reserves the right to pursue the contention (set out in Mr Akenhead's skeleton argument) that the adjudicator lacked jurisdiction to make the order which he made.
34. Against this background, as a first step in dealing with Multiplex's application for summary judgment, I have got to consider whether or not the adjudicator was acting within his jurisdiction.

Part 4: The Adjudicator's Jurisdiction

35. At an earlier stage Mott disputed the adjudicator's jurisdiction on a number of grounds. At the present hearing, however, Mott's case on jurisdiction is much more focused. Drawing together Mr Akenhead's oral and written submissions I would summarise his argument on jurisdiction in five propositions as follows:
 - (i) In relation to the first issue in the adjudication, namely the interpretation of the phrase in clause 13.1 "*all records pertinent to the services*", the dispute between the parties was a narrow one. That dispute concerned whether or not the interpretation set out in Multiplex's letter dated 30th August 2006 was correct. In the course of correspondence Mott never put forward an alternative interpretation of that phrase, and Multiplex never succeeded in widening the dispute.
 - (ii) Against the background of the correspondence passing in August and September 2006 it could not be said that there was a dispute between the parties concerning the broader question of what was the true meaning of the phrase "*all records pertinent to the services*".
 - (iii) In those circumstances, the relief claimed by Multiplex in respect of the first dispute (which I have read out in part 2 above) was too wide. Multiplex could not enlarge the adjudicator's jurisdiction by asserting a broad dispute which did not exist.
 - (iv) The adjudicator in his award answered the broad question, namely what was the true meaning of the phrase "*all pertinent records relating to the services*". The dispute between the parties was not as wide as that. Accordingly, the adjudicator did not have jurisdiction to adjudicate upon so broad a question.
 - (v) It can be seen from paragraph 90 of his award that the adjudicator rejected the interpretation of the phrase "*all pertinent records relating to the services*" put forward by Multiplex in its letter of 30th August 2006. In those circumstances, the adjudicator should have dismissed Multiplex's claim altogether. Alternatively, he should only have ordered disclosure of material which (a) fell within the scope of the adjudicator's interpretation, and also (b) fell within the scope of Multiplex's letter dated 30th August 2006.
36. Although other authorities are mentioned in his written submissions, Mr Akenhead has made it clear in oral argument that the two principal authorities which are relevant to this issue are ***Fastrack Contractors Limited v Morrison Construction Limited*** [2000] 1 BLR 168 and ***Edmund Nuttall Limited v RG Carter Limited*** [2002] 1 BLR 312.
37. These two cases certainly illustrate the proposition that an adjudicator's jurisdiction is circumscribed by the scope of the pre-existing dispute. Furthermore, a referring party cannot enlarge the adjudicator's jurisdiction by drafting an unduly broad or optimistic notice of adjudication. Nevertheless, despite the general guidance which I gain from those two decisions, I still come back to the correspondence passing in the present case. That is what this court must construe.
38. It seems to me unreal and artificial to read the correspondence passing between Multiplex and Mott during August 2006 as debating only the narrow question formulated by Mr Akenhead. In my view, on a fair reading of that correspondence, one issue in contention between the parties was the true meaning of the phrase "*all records*

pertinent to the services". Multiplex put forward their favoured reading of the phrase. Mott asserted that the true meaning was something different without saying what that was.

39. This analysis of the correspondence leads me to the conclusion that Multiplex correctly formulated the first dispute in its notice of adjudication. Furthermore, this interpretation of the correspondence leads to a result which accords with common sense.
40. It is a commonplace of dispute resolution that the judge, arbitrator or adjudicator may come to a decision which is somewhat different from that advanced by any individual party. Of course, there may be cases where the decider is only permitted to accept or reject the claimant's case, and is not permitted to reach any intermediate or different decision. But such a method of dispute resolution is not commercially sensible in the general run of cases.
41. In the present case the adjudicator gave careful consideration to the meaning of clause 13.1. Having done so, he was unable to accept the interpretation of the phrase "*all pertinent records relating to the services*" advanced by either party. Instead, he formulated his own interpretation of that phrase.
42. In my view, whether the adjudicator was right or wrong in that interpretation, he was resolving a pre-existing dispute between the parties. Accordingly, the adjudicator was acting within his jurisdiction. It follows from that, that pursuant to clause 24 of schedule 4B to the novation agreement the adjudicator's decision is binding on the parties until the dispute is finally determined by agreement between the parties or by arbitration.

Part 5: Compliance with the Adjudicator's Decision

43. The question whether the documents and the electronic material made available by Mott amounts to full compliance with the adjudicator's decision is a matter of controversy on the evidence before the court. I cannot resolve that controversy on the basis of written evidence at a hearing under CPR Part 24.
44. In the course of his submissions, Mr Akenhead has made some powerful points in support of Mott's case. Mr Akenhead points out that Mott has spent approximately 1000 man hours in identifying and retrieving the documents which have been disclosed. The documentation disclosed amounts to well over 100,000 pages. Multiplex, on the other hand, has only spent two days inspecting that material. Indeed, only one day before the commencement of this litigation. On the first inspection day the representative sent by Multiplex to inspect, namely Mr Edwards, was a relatively junior person.
45. I am bound to say that I am not favourably impressed by the extent of the inspection carried out by Multiplex before embarking upon this litigation. Nevertheless, it remains the case that there are factual issues between the parties in relation to compliance which this court is not in a position to resolve.
46. Mr Hughes has sought to persuade me by reference to the witness statements, in particular that of Mr Gettins, that there are some obvious and surprising gaps in the material disclosed by Mott. Accordingly, submits Mr Hughes, some modest relief should still be given by this court to secure compliance. Mr Hughes suggests an order along the following lines. First, that Mott be given a period of reflection, then that Mott should be required either (a) to give access to further material or (b) to confirm finally that no further material within the categories identified by the adjudicator exists.
47. I am not persuaded by Mr Hughes' submissions in this respect. On the present evidence I cannot say whether or not there are gaps in the material disclosed by Mott. There is no basis on which this court in Part 24 proceedings could make an order for specific performance or grant an injunction, as sought in Multiplex's application dated 11th December. Nor is there any basis for giving a toned down version of those remedies, as suggested by Mr Hughes in oral argument.
48. Let me now draw the threads together. For the reasons set out above I cannot at the moment reach any conclusion on the question whether Mott has complied with the adjudicator's decision. Accordingly, Multiplex fails in its application for summary judgment on its claims for specific performance, an injunction and/or damages.

Part 6: What relief (if any) should this court grant to Multiplex?

49. It follows from parts 4 and 5 above that the only issue upon which Multiplex has succeeded is the jurisdiction issue. A question then arises as to whether this court should grant a declaration in the terms set out in paragraph 1 of the prayer of the particulars of claim (subject to debate about the precise wording).
50. Mr Akenhead submits that this court should not grant a declaration essentially for three reasons. First, Mott, whilst disputing the adjudicator's jurisdiction, is nevertheless endeavouring to comply with his decision. Secondly, the court's power to grant a declaration is discretionary. The court does not and should not make declarations about issues which are academic. Thirdly, Multiplex is not on its pleadings entitled to a declaration.
51. During the course of Mr Akenhead's submissions I detected a certain lack of enthusiasm for his case on jurisdiction. I therefore enquired whether Mott was prepared to abandon its case on jurisdiction and to accept that the adjudicator's decision was valid. For perfectly understandable reasons, Mr Akenhead explained that Mott could not take this course. Instructions would need to be taken from Mott at a senior level before there could be any question of abandonment.
52. The position therefore remains as it was at the outset of this hearing. There is a dispute on the facts, as to whether Mott has complied with the adjudicator's decision. That factual dispute awaits resolution at a later date. There is also a fully articulated dispute on jurisdiction. Both parties' cases are set out in writing. In addition, both counsel

have developed their submissions on jurisdiction in oral argument. Mott maintains its contention that the adjudicator reached a decision which was in excess of its jurisdiction.

53. In those circumstances, subject to the pleading point, I consider that the proper course is for this court to grant the declaration sought. I reach this conclusion for three reasons. These are as follows:
- (i) The jurisdiction issue has been fully argued. Mr Hughes has persuaded me that Multiplex's case on this issue is of sufficient strength to warrant summary judgment.
 - (ii) The question of the adjudicator's jurisdiction remains a live issue between the parties.
 - (iii) As a matter of policy the Technology and Construction Court should at each stage of litigation resolve every live issue which is then capable of resolution. It is a tenet of case management that this court is constantly seeking to narrow the issues between the parties.
54. I come next to the pleading point. The particulars of claim sets out the factual history and recites the adjudicator's decision. Paragraph 27 of the particulars of claim asserts that the adjudicator's decision is binding on the parties, and paragraph 1 of the prayer seeks a declaration to that effect. It is quite true that the pleader does not assert in terms that Mott disputes the validity of the adjudicator's decision. On the other hand, it is and was common knowledge that Mott does not accept that the adjudicator had jurisdiction. This was made clear in correspondence both before and after delivery of the adjudicator's decision. I have come to the conclusion that the essential facts entitling Multiplex to a declaration are sufficiently pleaded in the particulars of claim. Furthermore, even if (contrary to my view) Multiplex's omission to plead an uncontroversial fact were to constitute a technical defect in the pleadings, I would be minded to permit an amendment to cure that defect.
55. Let me now draw the threads together. For the reasons set out above, Multiplex is entitled to a declaration along the lines set out in the particulars of claim, although the precise wording will require some modification. Multiplex's application for summary judgment on the balance of its claim is dismissed.
56. I am grateful to all counsel for the excellence of their oral and written submissions. I will now rise for five minutes while counsel endeavour to agree the precise wording of this court's order and other ancillary matters.

MR SIMON HUGHES (instructed by Messrs. Clifford Chance) appeared on behalf of MULTIPLEX CONSTRUCTIONS (UK) LIMITED
MR ROBERT AKENHEAD QC and MR NICHOLAS COLLINGS (instructed by Messrs. Fishburns) appeared on behalf of MOTT MACDONALD LIMITED