OPINION OF LORD MENZIES OUTER HOUSE, COURT OF SESSION 19th August 2008

Introduction

[1] The dispute between the parties to this action relates to an adjudication procedure in relation to a construction contract within the meaning of the Housing Grants Construction and Regeneration Act 1996 ("*the 1996 Act*"). Although narrated in the context of a separate action from the present proceedings, the background circumstances are summarised in the introduction to my Opinion dated 20 June 2008 ***in CSC Braehead Leisure Ltd & Anor v. Laing O'Rourke Scotland Ltd & Anor [2008] ScotCS CSOH_93,*** *2008 SLT 697,* and I refer to that narrative for the sake of brevity.

[2] The contractual framework in the present case was the Scottish Building Contract with Contractors Design Sectional Completion Edition May 1999 in its January 2002 Revision, which contained a Schedule of Amendments incorporated into the Employers' Requirements. The provisions of the contract relating to adjudication of disputes were contained in Article 7 of the SBCC Standard Form read together with Clause 39A thereof, as amended by section 3 of the Employers' Requirements. A dispute arose between the parties as to whether or not the defenders had, by defective work amounting to breach of contract, caused or materially contributed to either or both of a collapse of the ceiling in Auditorium 7 of the Odeon Cinema in the development, and the condition of the ceilings in the other auditoria in that cinema, and, if so, to what damages the pursuers were entitled from the defenders. On 23 January 2008 the pursuers remitted this dispute to adjudication by serving a notice of adjudication on the defenders. On 25 January 2008 Mr John D Campbell, QC was appointed adjudicator by the nominating body, and on 28 January Mr Campbell requested an extension to the 28 day period for the exercise by him of his jurisdiction to 10 March 2008. This was consented to by the pursuers. The defenders lodged a response to the referral, and the pursuers lodged a rebuttal to the response. The defenders were then allowed to make a response to the rebuttal. There was a hearing on 26 and 27 February, and at that time the adjudicator indicated that he wished a hearing on quantum. After sundry further procedure (to which I shall refer below) the period for the adjudicator issuing his decision was extended to 31 March 2008, then to 4pm on 4 April 2008, and then noon on 7 April 2008. By email timed and dated 11.56am on 7 April 2008 the adjudicator issued electronically his decision on the matters referred to him, together with his reasons therefor. A signed and witnessed version of the final document in writing was issued on 10 April 2008.

[3] The defenders have informed the pursuers that they do not intend to comply with the decisions of the adjudicator recorded in said decision letter because the final document is invalid. The pursuers have accordingly raised the present action in which they seek declarator that, save in any litigation which may be launched to determine whether or not the pursuers are entitled to damages from the defenders in relation to losses arising from the collapse of the ceiling of Auditorium 7 and the condition of the other ceilings, and until any such litigation may finally resolve all dispute about that matter, the defenders may not in any proceedings to which the pursuers are party, deny (i) that in the manner in which they carried out the design and construction of the works undertaken by them in connection with said ceilings, the defenders were in breach of the building contract and by that breach materially contributed to the collapse of the ceiling in Auditorium 7, or (ii) that by reason of its breaches of contract it materially contributed to rendering the other ceilings unsafe, thus necessitating their repair before the admission of the public. The pursuers also seek decree for payment to them by the defenders of the sum brought out in the adjudicator's decision. The defenders' position is that the adjudicator's pretended decision was invalid and should be reduced *ope exceptionis*. They maintain this on several grounds, including that the pretended decision was arrived at by the adjudicator without his exhausting the jurisdiction conferred upon him, that it was pronounced *ultra vires compromissi,* and also *ultra vires*, and also in breach of the rules of natural justice. The matter came before me for discussion at debate.

[4] Senior counsel for the defenders advanced several particular submissions directed against the adjudicator's purported decision letter, which are largely fore-shadowed in Answer 7.7 of the Defences and in the Note of Argument for the defenders (No. 11 of process). I propose to summarise parties' submissions with regard to each of these matters, and to discuss them, in turn. Before I do so, however, it may be helpful to record the more general opening submissions for parties, including some of the averments and contractual framework on which they placed particular reliance.

General submissions for the defenders

[5] Senior counsel for the defenders invited me to repel the pursuers' pleas-in-law, to sustain the second and third pleas-in-law for the defenders and to set aside the adjudicator's alleged decision; he maintained that there was sufficient in the averments and the agreed documentation to enable the court to sustain the defenders' second and third pleas-in-law at this stage. If I was against him on this, he moved me to sustain the defenders' first plea-in-law and to dismiss the action on the ground of relevancy. In the event that I was against him on either of these positions, having regard to the terms of the first conclusion this should be dismissed.

[6] The contractual framework for adjudication was to be found in Article 7 and Clause 39A of the parties' contract dated 23 and 24 September 2004, together with certain bespoke amendments to Clause 39A. Senior counsel drew my attention to Clause 39A.4.1 which provided that the adjudicator may, with the consent of all of the parties to those disputes, adjudicate at the same time on more than one dispute under the same contract, and observed that no such consent had been given in this case. Clause 39A.5.1 referred to "*a dispute or difference*" in the singular. He also drew attention to the use of the words "*sent"* and *"send"* in Clauses 39A.5.2, 39A.6.2 and 39A.6.3. He emphasised that the last of these clauses (which was subject to a bespoke amendment requiring

accompanying reasons for the decision) envisaged a single decision from the adjudicator, and required him to "*forthwith send that decision in writing to the parties*".

[7] Counsel submitted that the bespoke amendment to Clause 39A.6.4, which deleted the existing text and substituted therefor: "*The Adjudicator shall determine the matters in dispute in accordance with the law and the terms of the Contract, applying the normal standards of proof applicable to civil disputes*", imposed an onerous duty on the adjudicator, requiring him to find evidential proof on the balance of probabilities.

[8] Clause 39A.8.1 provided *inter alia* that *"the decision of the Adjudicator shall be binding on the Parties until the dispute or difference is finally determined by arbitration or by court proceedings or by an agreement in writing..."*, but this left open the question as to whether what the adjudicator has issued in the present case is "*the decision*". Clause 39A.8.2 emphasised that there could only be one decision which would be delivered to the parties (although this might contain more than one decision within it).

[9] Turning to what happened in the present case, senior counsel observed that parties agreed to the adjudicator's requests for extension of time on four occasions, the last agreed extension of time expiring at noon on 7 April 2008, the adjudicator stating when seeking this extension that "*there will not be another similar request.*" The adjudicator emailed parties at 11.56 on 7 April 2008 with what is stated to be his decision letter attached. In his email he states that:

"I enclose my Decision Letter, a hard copy of which has been signed before midday today. A copy of the signed letter will follow in the post. Please confirm that you have received this email.

You will see that I envisage some minor further written procedure to take account of a matter touching on overall quantum. Please also confirm that you agree to further extend the Adjudication procedure until 5pm on Friday 11 April for that stated purpose alone."

[10] At paragraphs 62 and 63 of the attached *"decision letter"* the adjudicator found and declared that the defenders were in breach of the building contract and by their breach materially contributed to the collapse of the ceiling in Auditorium 7 and rendered the ceilings in the other auditoria unsafe thus necessitating their repair before the admission of the public.

[11] The Adjudicator dealt with quantum at paragraphs 64 to 73. Paragraphs 72 and 73 were in the following terms:

"72. I therefore require parties to furnish me by Friday 11 April with a statement indicating their respective approaches to an appropriate sum to be deducted from the figure of £4,856,172. If there is agreement, so much the better, but if there is not, I am happy to work further on any submissions received so as to adjudicate upon the level of any such deduction which may be appropriate, even £Nil. I say nothing more at present about the appropriate level of such a deduction. The Adjudication will therefore, with parties' agreement, have to have its life extended until 5pm on Friday 11 April. Please confirm.

73. Accordingly, I find in favour of the partnership ad interim in the sum of £3,518,979.02 with simple interest thereon at the rate of 8% annually from the date of the Notice of Adjudication until payment."

There then followed an exchange of emails. At 16.57 on 7 April 2008 the defenders' solicitor wrote to the adjudicator indicating that as he had failed to issue a proper decision by noon that day, the mandatory period for a proper decision had expired and he was *functus officio* and unable to make any further directions or take any further action in relation to the adjudication. Even if it were possible for them to do so, he indicated that the defenders would not be prepared to agree to any further extension of time as requested in the adjudicator's email. The adjudicator replied by email dated and timed 22.40 on 7 April 2008 indicating *inter alia* that *"your response is extremely disappointing, since my Award is clearly an interim award..."*. The defenders' solicitor replied by email at 08.36 on 9 April 2008 stating *inter alia* that:

"Our clients do not consider that your purported Decision Letter constitutes a proper decision. A proper decision was not reached or issued by 12 noon yesterday. The purported Decision Letter purports to make an interim decision. An adjudicator has no power to make an interim decision. The purported Decision Letter does not purport to make a decision in terms of the Contract. In any event even if there had been power to make an interim decision, it not having been followed up by a final decision, the interim decision cannot be enforced."

[12] Thereafter the adjudicator sent hard copies of his "*Decision Letter*" to agents for both parties. That sent to the solicitors for the defenders has a postmark dated 10 April 2008. On 14 April 2008 the adjudicator sent an email to agents for each of the parties stating *inter alia:*

"In light of the absence of any detailed or substantive response by Friday 11 April at 12 noon, as required by me, I am writing now simply to confirm my decision".

Senior counsel submitted that this clearly indicated that the adjudicator regarded the procedure as ongoing until that moment. Senior counsel also pointed out that in paragraph 74 of the purported decision letter the adjudicator delayed any finding as to the expenses of the adjudication, including the adjudicator's expenses, until Friday 11 April. In terms of Clause 39A.7.1 of the contract, if the adjudicator wished to state how his fee and reasonable expenses was to be apportioned as between the parties he required to do this in his decision. The fact that he did not do so in the *"Decision Letter"* is inconsistent with this being his decision.

[13] Before turning to the specific arguments made in Answer 7.7 of the Defences, senior counsel referred me to three authorities which, he submitted, shed light on the correct approach to be taken to an adjudicator's decision. He accepted that the intention of the adjudication procedure was to obtain a quick and possibly *interim* decision and

that challenges such as those which he was making might subvert this intention. However, the authorities indicated that if an adjudicator acts outwith his powers, or does not fulfil his duties, or if he acts unfairly, or his reasons are inadequate, his decision can be challenged. Counsel referred me to ***Diamond* v *PJW Enterprises Ltd*** 2004 SC430, in which the Lord Justice Clerk observed at paragraph [20] that although adjudication has certain superficial similarities to arbitration, it is a *sui generis* system of dispute resolution:

"Whereas arbitration is a form of conclusive resolution of disputes, an adjudication is a form of provisional resolution only. Adjudication does not oust the jurisdiction of the courts or of an arbiter. Its primary purpose is to regulate a dispute ad interim, pending a definitive resolution of it by litigation, arbitration or agreement. The provisional nature of an adjudication is linked with the short time limits within which the process has to be concluded. On that view, I consider that a Scottish adjudicator is not subject to the common law limitation on the powers of an arbiter."

I was also referred to paragraph [40] in which the Lord Justice Clerk observed:

"the availability of judicial review as a remedy for an adjudicator's intra vires error of law would subvert the purpose of adjudication. If the courts were to interfere with a decision of an adjudicator on that ground, they would be adding a significant common law qualification to what is a statutory construct, they would be providing an opportunity for the kind of delay that the system is designed to prevent, and they would be providing a remedy which Parliament could have expressly provided but, it seems, chose not to."

[14] I was also referred to ***Ritchie Brothers (PWC) Ltd* v *David Philp (Commercials) Ltd*** 2005 SC 384, in which the Lord Justice Clerk held that an adjudicator's jurisdiction ceases on the expiry of the time limit provided, if it has not already been extended, and that the statutory provisions contained within section 108 of the 1996 Act indicate that the time limit is mandatory. I was also referred to Lord Nimmo Smith's Opinion at paragraph [46] of the same case, in which he observed that:

"If a speedy outcome is an objective, it is best achieved by adherence to strict time limits. Likewise, if certainty is an objective, it is not achieved by leaving the parties in doubt as to where they stand after the expiry of the 28 day period. These considerations reinforce the view that para. 19 means exactly what it says, so that it is not open to an adjudicator to purport to reach his decision after the expiry of the time limit."

[15] The third authority to which senior counsel referred me was ***Ballast plc* v *The Burrell Company (Construction Management) Ltd*,** reported in the Outer House at 2002 SLT 1039 and in the Inner House at 2003 SC 279. This case was authority for the proposition that the adjudicator must decide the dispute referred to him, and if he fails to exercise his jurisdiction to determine the dispute, his decision is a nullity - see particularly Lord Reed's Opinion in the Outer House at paragraphs [30], [39] and [42], which were expressly supported by the Inner House (see paragraph [19] of the Opinion of the Court in the Inner House). It was clear from these authorities, and the English cases cited therein, that although the courts recognised that there were limited grounds on which an adjudicator's decision might be challenged, a challenge might still be brought if it related to excess of jurisdiction or failure to exercise jurisdiction by the adjudicator, or breach of natural justice or the like.

General submissions for the pursuers

[16] Senior counsel for the pursuers invited me to refuse the defenders' motion, repel the defenders' pleas-in-law and grant decree *de plano* in terms of the conclusions. There was enough information before the court to enable a decision to be made either way at this stage, without the need for evidence.

[17] Senior counsel accepted that there were aspects in which an adjudicator's decision might be challenged before the courts, but the test for a successful challenge was set very high. The court would not set aside an adjudicator's decision, or refuse to enforce it, merely on the basis of stateable arguments; the special nature of the adjudication process, and the problems which flow from the tight timescales and provisional nature of the proceedings, are matters which have been recognised by courts in both England and Scotland. I was referred to the decision in ***RSL (South West) Ltd* v *Stansell Ltd*** [2003] EWHC 1390 (TCC) in which the court observed (at paragraph 31) that:

"The introduction of systems of adjudication has undoubtedly brought many benefits to the construction industry in this country, but at a price. The price, which Parliament, and to a large extent the industry, has considered justified, is that the procedure adopted in the interests of speed is inevitably somewhat rough and ready and carries with it the risk of significant injustice. That risk can be minimised by adjudicators maintaining a firm grasp upon the principles of natural justice and applying them without fear or favour. The risk is increased if attempts are made to explore the boundaries of the proper scope and function of adjudication with a view to commercial advantage."

[18] Senior counsel submitted that the risk of significant injustice is inherent in the adjudication procedure and is justified by the need for speed, which is required for *interim* regulation of contracting parties' cash flow. Against that background, if a challenge to an adjudicator's decision is to be successful, it must be very accurate and highly focussed, and the onus of showing that the decision is invalid rests heavily on the challenger, against the presumption that the adjudicator has fulfilled his duties properly - see paragraph [28] of the Lord Justice Clerk's Opinion in **Diamond.** I was also referred to ***Carillion Construction Ltd* v *Devonport Royal Dockyard Ltd*** [2005] EWCA Civ 1358, [2006] BLR 15, particularly at paragraphs 85 and 86, in which the Court of Appeal observed:

*"The objective which underlies the Act and the statutory scheme requires the courts to respect and enforce the adjudicator's decision unless it is plain that the question which he has decided was not the question referred to him or the manner in which he has gone about his task is obviously unfair. It should be only in rare circumstances that the courts will interfere with the decision of an adjudicator."... "It is only too easy in a complex case for a party who is dissatisfied with the decision of an adjudicator to comb through the adjudicator's reasons and identify points upon which to present a challenge under the labels **'excess of jurisdiction'** or **'breach of natural justice'**"... "The task of the*

adjudicator is not to act as arbitrator or judge. The time constraints within which he is expected to operate are proof of that. The task of the adjudicator is to find an interim solution which meets the needs of the case"... "We have every sympathy for an adjudicator faced with the need to reach a decision in a case like the present."

[19] Against the background of these general submissions for the parties, I turn to the specific challenges to the adjudicator's purported decision made by the defenders.

Arguments under Answer 7.7(i) and (iii) of the Defences

[20] There was some degree of overlap between the defenders' submissions in respect of these two matters, and the pursuers responded to both arguments together. Stated as shortly as may be, these arguments are that the adjudicator had no power to make *interim* findings or awards, and was obliged to reach his decision within the time limit as extended. The adjudicator's final document was clearly only an *interim* award, which was incompetent. The adjudicator did not determine the dispute referred to him, but left material matters to be determined at a later date, and failed to exercise his jurisdiction.

[21] Senior counsel for the defenders submitted that the final document did not decide an issue of damages, which could potentially vary between £2.6 million and Nil. The words used by the adjudicator in paragraph 73 expressly referred to an *interim* finding, and it was clear that this was not his final decision. That the adjudicator himself did not regard it as a final decision was made clear by his requirement that parties should take further procedural steps by 11 April, and by his reservation of apportionment of liability for his fees and expenses. He was obliged to reach one single decision within the time limit, and he did not do so. It was clear from ***Ritchie Brothers*** *(supra)* that his jurisdiction ended at noon on 7 April 2008, and he could not reach his decision after that time. The use of the singular *"decision"* in Clause 39A of the contract made it clear that the adjudicator was obliged to reach one final determination of the dispute before him (although that decision might include several decisions within it). Moreover, paragraph 20(1) of the scheme is not included in this contract. There was no express power in the adjudicator to make an *interim* award, nor was there any basis for implication of such a power. Although the courts have been prepared to imply powers in arbitrations, adjudication is quite different; for example, in the present case the adjudicator has no power to award expenses, but only to apportion his fees and outlays. Arbitration is not subject to a tight timescale, whereas speed is of the essence of an adjudication; there was no logic or need for a power to make an *interim* finding in an adjudication.

[22] In answer to these points, senior counsel for the pursuers maintained that there were three issues which had to be considered, namely (a) the proper construction of Clause 39A of the contract, (b) whether there is an implied power to issue a decision in anything other than a final decision, and (c) what is the proper construction of the adjudicator's final document.

[23] On the first of these issues, senior counsel for the pursuers accepted that Clause 39A.6.3 imposed a time limit on the adjudicator's jurisdiction, and the observations of the Inner House in ***Ritchie Brothers*** *(supra)* applied. He also accepted that the adjudicator had to determine all the matters referred to him. It was true that Clause 39A.5.2 and 39A.6.3 referred to *"decision"* in the singular, but it was clear from the rest of Clause 39A that the procedure was intended to be flexible, and within that flexible procedure the adjudicator could make *interim* directions (see for example, Clause 39A.8.2). Directions might be issued at any stage of the adjudication and were not confined to procedural matters - they might relate to such matters as security for the principal sum or disposal of related disputes. While it was clear that there must be one final decision dealing with all matters, there was no reason why the adjudicator could not issue his decision in part or could not issue an *interim* decision, so long as his remit was exhausted by the expiry of the time limit. The adjudicator was clearly aware of the time limit and regarded his decision letter as final - this is clear from his emails of 4 and 7 April. He clearly intended to produce a document which would fulfil the obligations incumbent on him in terms of his remit.

[24] With regard to the second issue for consideration, senior counsel submitted that there were four reasons for implying a power in an adjudicator to issue an *interim* decision, as follows:-

(i) The adjudicator is given wide powers in terms of Clause 39A.6.5 and these are not exhaustive. There is no obvious reason why he should not issue his reasons in portions. In terms of Clause 39A.6.5.12 he is empowered to issue other directions relating to the conduct of the adjudication.

(ii) Although senior counsel accepted that the whole dispute must be covered by a single final decision, there was no reason why *"en route"* to this decision the adjudicator should not make an *interim* or partial finding or award. In terms of Clause 39A.6.5 he was empowered to set his own procedure.

(iii) An *interim* decision is a form of *interim* regulation and is entirely consistent with the statutory system of *interim* regulation.

(iv) An adjudicator has wider powers than an arbiter, and is not subject to the common law limitations on the powers of an arbiter - see ***Diamond*** at para. [20]. I was also referred to paragraph 67 of the re-issue of the Stair Memorial Encyclopaedia dealing with arbitration, the author of which is Lord Hope of Craighead. Some doubt is there expressed as to whether an arbiter's power to pronounce *interim* awards can be implied; counsel observed that an *interim* award may be possible in arbitration, but there is nothing in the body of law on arbitration which might suggest that an adjudicator does not have an implied power to make an *interim* award should he consider it appropriate to do so.

[25] Turning to the third issue, namely the proper construction of the final document, senior counsel asked the question: On a proper construction of the whole terms of the final document, and having regard to the surrounding

circumstances, does the final document constitute the adjudicator's decision in terms of Clause 39A.6.3? He made four submissions in this regard:-

(a) On the ordinary canons of construction, the adjudicator's emails cannot be taken into account. That timed at 22.40 on 7 April 2008 was manifestly informal, written late at night and not a considered response to a legal query regarding the final document. In any event, the adjudicator was on any view *functus* by this time.

(b) It was clear that the adjudicator knew that noon on 7 April 2008 was the expiry of his authority - this was apparent from the terms of paragraph 72 of his decision letter. Adjudicators are often expected to make their "*best shot"* on limited material; they may have to choose between saying *"I cannot reach a decision"* or "*I am expected to do my best and will do so"*. Senior counsel referred me to ***KNS Industrial Services (Birmingham) Ltd v Sindall Ltd*** 75 Con LR 71 (particularly at paragraph 24 thereof).

(c) Where the adjudicator knows that the time limit is about to expire it may be that all that can be done is for him to give it his best shot. The final document is headed *"Decision"* and opens with the words *"This decision follows a referral to Adjudication by the Claimant of a number of questions...."*. At the end, immediately above the adjudicator's signature, are the words "*The Decision Of"*. While senior counsel accepted that he might have phrased paragraphs 72 and 73 differently, this document bears to be the decision following the referral. All other things being equal, the court will support the decision. There was nothing to suggest that this was not intended to be a decision to be relied on. Although in paragraph 72 the adjudicator indicates that he requires further information, it is clear that he also knew that he must give a decision, and he did so. His decision exhausted the issues before him. The adjudicator clearly intended paragraph 73 to mean something - the paragraph is in bold font and opens with the words "*Accordingly, I find in favour of the Partnership ad interim in the sum of £3,518.979.02"*. The adjudicator is clearly not saying that because of the query regarding deduction raised in paragraphs 70-72 he is unable to make any financial award; rather, he is saying that the minimum figure which he could award is the figure specified in paragraph 73. It is clear that he wanted to make an award before the time limit expired, and he had to make a formal and operative award, which he did (although if both parties agreed to an extension of time then that decision might be refined). What he was doing was very similar to what the adjudicator did in ***CIB Properties Ltd v Birse Construction Ltd*** [2004] EWHC 2365 [TCC], [2005] 1 WLR 2252, particularly at paragraphs 170, 173 and 174. On a fair reading of the adjudicator's decision in the present case, he was doing the best that he could in the time allowed; he can be presumed to have been acting in good faith and not to produce a nullity.

[26] The only issue that was causing him concern was whether the sum of £490,000 (which also arose in another dispute between the parties) should result in any deduction. In his finding at paragraph 73 he finds in favour of the pursuers for the minimum amount which he considers to be due. It may have been unsatisfactorily worded and untidy, but he was trying to do the best that he could. If there was any error, it was an *intra vires* error which would not entitle this court to intervene. Senior counsel emphasised that courts are usually prepared to support the validity of an adjudicator's decision unless there is something clearly wrong and *ultra vires*. Here, the adjudicator bears to make a decision regarding this referral, and although he uses the words "*ad interim*" his decision responds to the whole of the claim and gives the claimants the minimum sum which they were seeking. He has made a determination on the matters referred to him; this may perhaps embrace an error, but it is not a failure to exhaust his jurisdiction.

(d) Even if this decision is construed as being *interim* when issued, given its nature it became final on the expiry of the time limit of the adjudication. It is stated to be a decision, it is expressed in the language of findings, and it dealt with all issues on liability and quantum referred to the adjudicator. Senior counsel referred me to *Bell on Arbitration* (2nd Edition) at paragraph 507 and submitted that because the adjudicator has awarded the minimum figure that he would award in any event, even if this award was *interim* when it was issued, it became final four minutes later on the expiry of the time limit.

[27] In reply, senior counsel for the defenders observed that many of the powers conferred on the adjudicator by Clause 39A of this contract replicated the powers contained in paragraph 13 of the Statutory Scheme. However, paragraph 20(1) of the Statutory Scheme was not replicated in the contractual powers. Under the Scheme, the adjudicator was given express power to make partial awards. That power was not awarded to the present adjudicator under the contract. It must be presumed that this was deliberate, and so a power to make partial awards is not to be implied in the present case. If the adjudicator had no power to make partial awards, it is even less likely that he would have an implied power to make *interim* awards.

[28] Turning to the proper construction of what the adjudicator said in the final document, senior counsel for the defenders observed that the adjudicator was not saying in paragraph 73 that this was his best shot but that he was prepared to refine it. It is clear from paragraph 71 that he had not made up his mind as to what an appropriate deduction should be, and this is reinforced by the terms of paragraph 72 in which the adjudicator requires parties to furnish him with a statement indicating their respective approaches to this issue. The direction that there should be further procedure is inconsistent with this document being the final decision in the adjudication. The adjudicator confirms that he has not yet decided on this issue and so the adjudication will have to have its life extended. Moreover, the finding in paragraph 73 is clearly stated to be "*ad interim*". It was simply not realistic to construe this document as a final decision on all the issues referred to the adjudicator. Senior counsel again pointed to the adjudicator's treatment of expenses in paragraph 74; by reason of Clause 39A.7.1 , any apportionment of the adjudicator's expenses required to be made in the final decision, and the failure to

make such an apportionment supports the interpretation that the adjudicator anticipated that parties would agree to a further extension and was not treating this document as his final decision.

[29] In reaching a decision on this aspect of the dispute before me, I do not consider that it is open to me to use as an aid to construction the emails sent by the adjudicator after he issued the final document electronically at 11.56am on 7 April 2008. Looking to the wording of the final document, and in particular the contents of the last four paragraphs, both senior counsel used descriptions such as "*unsatisfactory", "untidy*" and *"telegraphic";* I find it difficult to disagree with these epithets, and in many circumstances in which a person is required to determine issues before him criticisms of the language and approach adopted towards the end of this final document would be difficult to avoid. However, the circumstances facing an adjudicator in a dispute such as this are very different from those facing many other decision makers exercising a judicial, quasi-judicial or even administrative decision-making function, such as arbiters, judges, tribunals, planning reporters and the like. This dispute involved a large number of complex issues of both fact and law, which had to be assimilated, considered and determined within a very tight timescale. Criticisms which might properly be made in other circumstances are not necessarily appropriate in these circumstances.

[30] In considering the competing submissions on this point, and indeed on other points to which I shall turn below, I have at the forefront of my mind the various *dicta* to which I was referred which indicate the approach which courts should adopt when required to address a challenge to the decision of an adjudicator - particularly the observations in ***RSL (South West) Ltd* v *Stansell Ltd*** at paragraph 31, the observations of the Court of Appeal in England in ***Carillion Construction Ltd* v *Devonport Royal Dockyard Ltd*** at paragraphs 53 and 84-86, and the Opinion of the Lord Justice Clerk in ***Diamond*** (particularly at paragraphs [20], [28], [31] and [40]). As Humphrey Lloyd J. put it in ***KNS Industrial Services (Birmingham)*** (at paragraph 24):

"Adjudicators' decisions are intended to be provisional and in the nature of best shots on limited material. They are not to be used as a launching pad for satellite litigation designed to obtain what is to be obtained by other proceedings, namely the litigation or arbitration that must ensue if the parties cannot resolve their differences with the benefit of the adjudicator's opinion."

Some of these observations were made in the context of adjudications under the 1996 Act and the Statutory Scheme; however, while of course there may be differences between the powers of an adjudicator who proceeds entirely under the provisions of the Act and the Scheme, and those of an adjudicator who proceeds under contractual provisions, I see no justification for a radically different approach by the courts to review of an adjudicator's decision. In both cases the adjudicator's decision is not open to challenge on *intra vires* errors of law. In both cases the adjudicator's decision will be a form of provisional resolution only, which may be subject to final determination by arbitration or litigation. In both cases short time limits will apply, and the adjudicator may have to do his best on the material available. In both cases the adjudication process may be described fairly as a form of *"rough justice"*. By rehearsing these similarities, I am not to be taken to be suggesting that the courts will not interfere with an adjudicator's decision - clearly they will do so in appropriate circumstances, for example, where there has been a breach of natural justice, or where the adjudicator has patently failed to exercise his jurisdiction or has patently exceeded that jurisdiction. Nonetheless, it must be borne in mind in a case such as this that the parties have contracted for a form of provisional dispute resolution in which speed of determination at the provisional stage has a high priority, which may result in roughness of justice at that stage.

[31] In light of these general considerations, I turn to the questions of whether, on a proper construction of the adjudicator's final document, this amounted to a final decision in terms of Clause 39A.6.3 of the contract, and if it did not, whether there falls to be implied into the adjudicator's powers a power to make an *interim* decision, and if so, what was the effect of his decision of 7 April 2008.

[32] It cannot be denied that there are infelicities of expression in the adjudicator's final document, particularly in the last four paragraphs. The acknowledgement in paragraph 71 that the adjudicator cannot reconcile one figure with another, the requirement in paragraph 72 for the parties to furnish him with a further statement indicating their respective approaches to this matter, the statement that the finding in paragraph 73 is *ad interim*, and the reference in paragraph 74 to delaying apportionment of the adjudicator's expenses until a later date, might tend to suggest that this was indeed not a final decision, and that the adjudicator had not exhausted his jurisdiction. However, looking at the final document as a whole, I have reached the view that the adjudicator intended it to be his decision in terms of Clause 39A.6.3 of the contract, and that it was indeed his decision. His findings with regard to liability on the part of the defenders are conclusively and clearly stated at paragraphs 60-63 of the final document. The adjudicator then addresses quantum at paragraphs 64-73 of the final document. He states (at paragraph 69) that he is satisfied that he has sufficient information to allow him to make a decision on quantum. He goes on to express a concern about one aspect of the figures for quantification, which may result in a deduction from the amount claimed by the pursuers. Whilst I agree with the observation by senior counsel for the pursuers that the adjudicator's reasoning in paragraph 71 verges on the *"telegraphic",* I also agree with him that the adjudicator's concern was directed to the figure of £490.000 (ie approximately 10% of the total value of the pursuers' claim) and that there was no question of the adjudicator considering deduction of more than this figure (and certainly not the figure of about £2.63m which also appears in paragraph 71) from the total value of pursuers' claim. I agree that what the adjudicator has done in paragraph 73 is to find in favour of the pursuers for the minimum sum which could possibly be due to them. The pursuers might suggest (although they do not do so in these proceedings) that this represented an element of rough justice contrary to their interests. Viewed from the defenders' perspective however, I do not consider that the defenders can claim to have suffered prejudice nor

that the adjudicator has failed to exhaust his jurisdiction. On the contrary, the adjudicator was clearly aware of the imminent expiry of the time limit for his jurisdiction, and provided a decision on all the matters referred to him some four minutes before the expiry of that time limit. He offered to refine that decision if parties agreed to an extension of the time limit to enable him to do so, but the amount which he found in favour of the pursuers was the *"bottom line"* below which he would not have gone. I am satisfied that this was indeed the decision which the adjudicator was required to make in terms of Clause 39A.6.3 of the contract and that, despite indications to the contrary, it was not an *interim* decision.

[33] If I am wrong in the view expressed above, it is appropriate that I should consider whether the adjudicator had power to make an *interim* decision and, if the final document was an *interim* decision, what effect it had. I see nothing in the underlying logic of the adjudication procedure which would prevent an adjudicator from issuing a partial or *interim* decision. This is a quite distinct and different procedure from arbitration. The emphasis is on speed of decision-making, on a short procedural timescale, and on provisionality of the adjudicator's decision. The adjudicator is given wide powers in Clause 39A.6.5 to regulate his own procedure. I see no reason why, if the adjudicator considers it appropriate, he should not issue a partial or *interim* decision. For example, there may be a discrete issue which is capable of ready and speedy determination, and in respect of which it may be advantageous to issue an *interim* decision. I do not consider that this is precluded by the provisions of Clause 39A of this contract. Notwithstanding that there is no equivalent in the contract to paragraph 20(1) of the Statutory Scheme, I see no reason to interpret the wide powers conferred on the adjudicator by Clause 39A.6.5 of the contract in a restrictive way so as to exclude the power to make an *interim* decision or *interim* regulation.

[34] If the final document was, contrary to what I have held above, an *interim* decision, what is its effect? On the hypothesis that this was an *interim* decision, the time limit for the adjudicator to reach his final decision and forthwith send it in writing to the parties, in terms of Clause 39A.6.3, as extended, expired four minutes after the issuing of this *interim* decision. As senior counsel for the pursuers conceded, if there was only an *interim* or partial award and the final decision was not issued before the expiry of the time limit, the adjudicator would not have exhausted his jurisdiction. I find it difficult to reconcile this concession with the fourth submission made by senior counsel for the pursuers regarding the proper construction of the final document, namely that given its nature it became final on expiry of the adjudication period. If the final document is properly construed as an *interim* decision because it did not deal with the aspect of quantum about which the adjudicator expressed concern, it seems to me that it must follow that the decision did not deal with all issues referred to the adjudicator. In that event a partial or *interim* decision by the adjudicator would not become final (in the way described in *Bell on Arbitration* at paragraph 507) because the adjudicator had failed to exhaust his jurisdiction. It seems to me that there is an element of circularity in this argument. I have held that the final document is truly the decision required of the adjudicator in terms of Clause 39A.6.3 because it considered and determined all the issues referred to the adjudicator. If it did not do so, it must be treated as an *interim* or partial decision, in which case it must fall because the adjudicator did not exhaust his jurisdiction. For the reasons which I have given above, and on the basis that I have reached the view that the sum referred to in paragraph 73 of the final document was the minimum sum to which the adjudicator considered that the pursuers were entitled, I consider that he did indeed exhaust his jurisdiction, and this ground of challenge fails.

The argument under Answer 7.7(ii) of the Defences

[35] Senior counsel for the defenders submitted that the adjudicator's final document was not severable. Although several orders were sought by the pursuers in the claim referred to the adjudicator, on a correct analysis there was only one dispute, namely whether the pursuers had suffered loss and damage as a result of breach of contract on the part of the defenders. Moreover, even if there were separate disputes, the final document had to be treated as a whole, and if any part was invalid, the whole must fall. Even if severable, the whole of paragraph 73 was invalid and unenforceable. Clause 39A.1 and 39A.2 provided for reference of a dispute or difference to be referred to an adjudicator, and in terms of Clause 39A.4.1 the adjudicator was only empowered to adjudicate on more than one dispute under the same contract with the consent of the parties. Senior counsel accepted that a dispute might include several sub-disputes, and whether parts of an adjudicator's award might be saved if other parts were invalid depended on the circumstances and the nature of the challenge.

[36] I was referred to ***Homer Burgess Ltd* v *Chirex (Annan) Ltd*** 2000 SLT 277 in which Lord Macfadyen expressed the view (at page 287C-F) that in the circumstances of that case, in which much of the dispute had been held to be outwith the adjudicator's jurisdiction but some parts were agreed to be within his jurisdiction, that it would be competent for him either to reduce the whole decision or to grant decree enforcing that part of the decision that was valid. This question was touched on, but not decided, in ***Diamond*** (at paragraph [44]). The point was considered in ***RSL (South West) Ltd*** (at paragraph 38). Akenhead J. considered the question of severability at greater length, and helpfully reviewed several authorities, in ***Cantillon Ltd* v *Urvasco Ltd*** [2008] EWHC 282 (TCC), in paragraphs 58 to 63. Finally, I was referred to an unreported Opinion of Lord Clarke in ***Ardmore Construction Ltd* v *Taylor Woodrow Construction Ltd*** dated 12 January 2006, [2006] CSOH 3, which senior counsel referred to as an example of five claims for payment being made within one reference to an adjudicator, and the court granting *interim* decree in respect of four of the awards but not the fifth. In light of these authorities, senior counsel for the defenders submitted that if there is truly only one dispute or difference, and a challenge is made successfully to some part of the adjudicator's decision, the whole decision must fall. In the present case, the

pursuers' declarator of causation of damage is not a separate dispute from the damages sought - these are facets of the same dispute and so the adjudicator's final document cannot be regarded as severable.

[37] In response, senior counsel for the pursuers submitted that there was truly a multiplicity of matters of fact and law disputed before the adjudicator. In particular, the adjudicator had to decide first whether the defenders had materially contributed to structural problems in the cinema development, and thereafter, if causation was established, to decide what damages flow from that material contribution. These are severable elements of the adjudicator's decision. Adjudicators' decisions have been regarded as being severable in other cases - eg *Homer* ***Burgess Ltd,*** and ***Ardmore Construction Ltd.***

[38] In considering this issue, I have found most assistance from Akenhead J.'s review of the authorities in ***Cantillon Ltd v Urvasco Ltd,*** and I respectfully agree with the approach which he sets out (albeit *obiter*) at paragraph 63. In the present case I agree with senior counsel for the defenders that the contractual mechanism for adjudication envisages (at least in the first instance) that a single dispute or difference shall be referred to adjudication. Clause 39A.4.1 provides that the adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on more than one dispute under the same contract. Looking to the notice of adjudication (No. 7/8 of process) which is dated 22 January 2007 (which should clearly be 2008), the notice refers throughout to "*the Dispute"* or "*a Dispute"* in the singular. Section 4 of the notice summarises *"the Dispute",* and paragraph 4.3 states *inter alia* in short, the defenders' failures can be summarised as a failure to design and/or construct works to each of the 12 auditoria, which form part of the Cinema in accordance with the terms of the Building Contract. Those failures caused or materially contributed to a ceiling collapse in one of the auditoria and caused or materially contributed to the defenders' works in the other 11 auditoria being defective and/or unsafe and/or necessitating extensive remedial works to be undertaken in each of the other 11 auditoria. The notice goes on to state that the pursuers have suffered loss and expense and/or damages as a result of these failures and contends that the defenders are liable to the pursuers in respect thereof. It states that the pursuers are not seeking in this adjudication recovery of all of their losses as a result of said failures, and reserve the right to bring separate claims against the defenders in respect of those losses.

[39] The pursuers do not aver that the defenders have consented to the adjudicator adjudicating at the same time on more than one dispute in terms of Clause 39A.4.1. The language of the pursuers' notice of adjudication is strongly suggestive of the pursuers regarding this truly as one dispute. I am in no doubt that a single dispute may contain sub-disputes or heads of claim which may themselves be the subject of dispute, but this does not necessarily result in more than one dispute being referred to the arbiter. To take a simple example of a personal injuries action arising from an accident at an employee's workplace, the pursuer may rely on breaches of a variety of statutory and common law duties, and may seek several heads of damages, including *solatium*, past and future loss of earnings, loss of employability, personal services, loss of pension rights etc. Each of these may be disputed, but these may be described as incidental disputes or "*sub-disputes"* - there is truly only one dispute, which is whether the employer is liable to make reparation to the employee, and if so, in what sum. No doubt this is an over simplistic analogy when considering the present case. However, having regard to the terms of the contract and to the notice of adjudication, I am satisfied that in substance only one dispute was referred to adjudication.

[40] That being so, I am satisfied that if there is a successful challenge to one part of the adjudicator's decision (which challenge cannot, of course, relate to an *intra vires* error of law, but may relate to something such as breach of natural justice or excess of jurisdiction or failure to exercise jurisdiction) then the whole decision will fall to be reduced.

The argument under Answer 7.7(iv) of the Defences

[41] Senior counsel for the defenders submitted that the adjudicator did not send his decision in writing forthwith as required by Clause 39A.6.3, and contrasted the requirement to send forthwith the decision in writing to the parties in that clause with the wording to be found in Clause 39A.5.2 and Clause 39A.6.2. A requirement for the decision to be sent in writing to the parties meant the actual document, and not merely an electronic version thereof. Physical delivery of the referral and the response were required because they were important matters of record, and the adjudicator's decision is equally important. Clause 39A.8.2 required parties to comply with the decisions of the adjudicator immediately on delivery of the decision to the parties; it was necessary to have a record copy available at that time. Although delivery by electronic means might be quicker, it was not generally regarded as being so accurate. Senior counsel referred me to ***St Andrews Bay Development Ltd v HBG Management Ltd*** 2003 SLT 740 and ***Barnes & Elliot Ltd v Taylor Woodrow Holdings Ltd*** [2003] EWHC 3100 (TCC), [2004] BLR 111.

[42] In reply, senior counsel for the pursuers submitted that sending the final document by email was sending it in writing. So long as the decision was set down in words, and not simply provided orally (for example over the telephone), this was sufficient. The adjudicator made it clear in his first communication, namely the email dated 28 January 2008 sent to both parties and confirming the acceptance of his appointment, that *"all further communication ... should be by email unless otherwise directed, or unless their size makes that impossible. I shall communicate only by email or telephone unless circumstances dictate otherwise."* This confirms that email was the generally accepted manner of communication in this adjudication, and was consistent with the observations in ***Barnes & Elliot (supra) and Treasure & Son v Dawes*** [2007] EWHC 2420 (TCC), [2008] BLR 24. What happened at 11.56am on 7 April 2008 was the adjudicator intimating his decision to parties. There was no justification for

construing the contractual provisions so that "*send*" must mean post; all that was required was that the written decision must reach the recipient.

[43] I find myself in complete agreement on this point with Lord Wheatley's views in ***St Andrews Bay Development Ltd*** at paragraph [17], where he observed:

"Para. 39A.6.3 requires the adjudicator to reach his decision within 28 days of the referral and forthwith send that decision in writing to the parties. In terms of current commercial understanding and procedure, and modern methods of communication, there would appear to be little doubt that the terms 'forthwith' should mean that the decision is to be sent immediately or as quickly as possible by what is currently regarded as conventional and universally available methods of business communication. In particular therefore there would appear to be no reason why any such decision cannot be immediately transmitted to interested parties by fax transmission. It may conceivably be arguable that a decision could be communicated or intimated to other parties by first class postal delivery, although such a claim might be regarded as archaic."

[44] Support for this view was expressed in ***Barnes & Elliot*** (*supra* at paragraph 20) in which HHJ Lloyd QC observed:

"Nowadays virtually all adjudicators have available instantaneous methods of transmission. Lord Wheatley was right to say that the use of first class post is archaic. If an adjudicator cannot send the decision by email or fax, one or other of the parties will usually be keen to send someone to collect it."

The fact that the electronically delivered decision did not bear the adjudicator's signature is neither here nor there, for the reasons set out by Akenhead J in ***Treasure & Son v Dawes***.

[45] As I have already observed, the whole contractual scheme for adjudication places emphasis on speed of procedure and prompt issuing of a decision. It would be surprising if a court such as this, which deals routinely with commercial disputes between parties engaged in business, was ignorant of modern methods of communication, and of the fact that important decisions are routinely conveyed by these methods. I see no justification for the construction of this contract urged on me by senior counsel for the defenders that the parties contracted for delivery of the adjudicator's decision by archaic means. I am satisfied that electronic delivery of the adjudicator's written decision to the parties fulfilled the obligation on him in terms of Clause 39A.6.3 of this contract, and that this ground of challenge fails.

The argument under Answer 7.7(v) of the Defences - adequacy and intelligibility of the adjudicator's reasoning

[46] Senior counsel made several specific criticisms about the adequacy and intelligibility of the adjudicator's reasons. He maintained five of these criticisms (set out in sub-paragraphs (a) to (c) and (f) and (g) of Answer 7.7(v)), but did not seek to advance those criticisms set out in paragraphs (d) and (e). Before making these specific criticisms he made some general submissions as to the requirement for adequate and intelligible reasoning. He referred me to ***Diamond*** (in particular at paragraph [31] of the Lord Justice Clerk's Opinion), ***Carillion Construction Ltd*** (particularly at paragraph 53), ***South Bucks BC v Porter (No 2)*** [2004] UK HL 33, [2004] 1WLR 1953 (particularly at paragraphs 35 and 36), ***Wordie Property Co Ltd v Secretary of State for Scotland*** 1984 SLT 345, ***Albyn Properties Ltd v Knox*** 1977 SC 108, ***Safeway Stores plc v National Appeal Panel*** 1996 SC 37 (particularly at pages 40/41) and ***Chief Constable Lothian & Borders Police v Lothian & Borders Police Board*** 2005 SLT 315 (particularly at paragraphs [70] and [71]).

[47] Senior counsel for the defenders accepted that the majority of these authorities did not relate to adjudication, but to other systems such as rent assessment, pharmacy licensing and disciplinary tribunals. However, these authorities indicated the approach which the courts will take where a decision maker is required to provide reasons. Where, as here, a contract provides that reasons have to be given, there must be an implied term that these reasons will be intelligible and adequate, otherwise the provision would have no content. What amounts to intelligible and adequate reasoning will depend on the context. Although there is no challenge to an *intra vires* error by an adjudicator, there remain a number of potential challenges such as failing to take account of material considerations or failure to fully exercise jurisdiction. The reasons must be adequate to show that the adjudicator has fulfilled his duties and that he has at least considered the major questions before him (whether or not his conclusion was correct) and that he has decided the major issues referred to him, applying the normal standards of proof. Senior counsel accepted that the adjudicator could not be challenged if he was wrong, but he must as least show that he has considered the issues. This was consistent with the Lord Justice Clerk's views in ***Diamond*** (at paragraph [31]). As Lord Reed put it in the ***Lothian & Borders Police Board*** case (at paragraph [71]),

"where a provision expressly requires a decision to be communicated together with the reasons for it, then if adequate reasons are not included in the record of the decision and notified as required, then the decision itself will normally be held to be invalid."

[48] Senior counsel for the defenders observed that the adjudicator's reasons were much briefer than one might expect given the size and complexity of the issues before him. Parties' written arguments and contentions, together with supporting materials, were lengthy. There was a referral, a response, a rebuttal to the response, submissions regarding experts' reports, and a response to the rebuttal. There was a hearing on quantum, and then pursuers' and defenders' submissions on quantum. There were then pursuers' and defenders' closing submissions. A large number of issues were raised, and it was not apparent that the adjudicator addressed all of these. Against these general observations, senior counsel for the defenders advanced his specific criticisms as follows:

(a) The adjudicator did not give adequate reasons or explain his views for his decision on the issue of the appropriate remedy for the pursuers. This was raised in paragraph 3.11 of the defenders' final submission to

the adjudicator (No. 31 of the agreed bundle). The defenders' submission to the adjudicator on this point was that the pursuers' remedy was one of damages for delay to completion, not damages for breach of contract in failing to have delivered a building conform to contract at a stage prior to Practical Completion. This argument had been raised and developed more fully in paragraph 6.3.1 of the defenders' response (No. 14 of the agreed bundle) in which the argument was divided into seven separate sub-paragraphs and authorities in support were cited. The adjudicator deals with these submissions very briefly, together with other unrelated submissions, in paragraph 39 of the final document, and proceeds to state in the following paragraph that he agrees with the pursuers *"on this matter"*. He does not make it clear to which of the matters raised in paragraph 39 he is referring, and he does not appear to have addressed the argument that the remedy sought is the wrong one.

(b) The adjudicator did not deal at all with the argument at paragraph 3.12 of the defenders' final submission, and in particular the last sentence of that paragraph which related to apportionment of liability as between the defenders and Odeon. The issue of whether certain terms could be implied into the contract, and whether they were breached, and if so, the consequences of such breach, was dealt with more fully in the defenders' response to the referral at paragraph 6.3.1(vii) and 6.3.3. All that the adjudicator dealt with was his finding that the defects were not caused solely by fault of Odeon - he did not explain his views on these matters at all. Senior counsel emphasised that the question was not whether the arguments made on behalf of the defenders were sound, but whether the adjudicator considered them. While he did at least mention the argument contained in paragraph 3.11 of the defenders' final submissions in his final document, the argument in 3.12 is not mentioned at all. It was submitted that the defenders were entitled to see a discussion and a conclusion on these matters; the adjudicator might be entitled to decide these points as he thought fit, but the parties were entitled to see that he had at least dealt with these issues which were clearly *"flagged up"* for his decision.

(c) At paragraph 61 of the final document the adjudicator found that the defenders were in breach of contract in that they made a material contribution to the events which occurred and to the losses and/or damage which flowed from those events. He did not explain what loss and damage the defenders were said to have contributed to. It could not be the whole of the pursuers' loss and damage, because it is clear from paragraphs 71 and 72 of the final document that the adjudicator considers that some deductions are appropriate. His reasoning on these deductions is not intelligible. The pursuers' submissions on quantum were to be found in the table at page 18 of Document 28 of the agreed bundle. These show the total sum claimed in the adjudication as being about £4.8 million; there was the possibility of a deduction from this figure of £2,633,903.24 if certain contested items were found in favour of the defenders. The defenders' submissions on quantum were to be found in No 29 of the agreed bundle; at page 12 of this document, under paragraph 5 "*liquidate and ascertained damages"* the defenders contend that they are entitled to be paid £490,000. In paragraphs 71 and 72 of the final document the adjudicator states that he is not able, at present, to square these two figures, and that there might be a deduction which might be Nil. If this was his final decision, there were no intelligible reasons to explain how he reached it. Even on his *interim* finding of £3,518.979.02 the adjudicator does not explain how he treats the deduction claimed by the defenders of £490,000. This is because he did nothing with it - he wanted to consider further how it fitted in. The reader of the final document is left to wonder how the adjudicator dealt with the possible deductions totalling £2,633,903.24; it is not clear whether he accepts that any deduction is appropriate, nor is there any reasoning as to why a deduction was or was not appropriate.

(g) In paragraph 71 of the final document, the adjudicator states that he accepts the pursuers' figures on quantum, but provides no reasons for this statement nor any intelligible explanation of why the defenders' submissions and supporting evidence were rejected. In this respect, the defenders' submission was not that the reader could not make sense of the adjudicator's reasoning on quantum, but rather that there was a complete absence of such reasoning. There was a wealth of factual material in the form of expert evidence for the pursuers (Nos. 18 and 27 of the agreed bundle) and for the defenders (No. 20 of the agreed bundle). On this point, the adjudicator's reasons were both inadequate and unintelligible.

(f) The adjudicator was required to apply the normal standards of proof applicable to civil disputes. No explanation was given as to which evidence he accepted, why he accepted it, or why he rejected large parts of the defenders' evidence. The requirement for the normal standards of proof applicable to civil disputes is not normally part of the obligations imposed on an adjudicator - it arose in this case from a bespoke amendment. Because of it, there must be proof, and the adjudicator must rely on evidence. Although he refers to the standard and burden of proof at paragraph 37 of the final document, nowhere is there any explanation as to his reasoning when applying this standard. Because of this bespoke amendment, the present case falls to be excluded from the generality of the South Bucks case.

[49] In conclusion on this point, senior counsel for the defenders submitted that if the adjudicator's reasons are inadequate or unintelligible, the alleged decision of the adjudicator under the contract is not a decision. If that is correct, for the reasons discussed above, and in particular in light of ***Ballast*** *(supra)* there is no question of severability, because it was a contractual obligation on the adjudicator to give reasons with his decision.

[50] In response to these submissions regarding reasons, senior counsel for the pursuers submitted that in order to succeed the defenders required to satisfy a higher test than simply adequacy and intelligibility. The Lord Justice Clerk observed in ***Diamond*** at paragraph [31] that

"A challenge to the intelligibility of stated reasons can succeed only if the reasons are so incoherent that it is impossible for the reasonable reader to make sense of them. In such a case, the decision is not supported by any reasons at all, and on that account is invalid".

The informed reader knows the general background to the case. This test, based on reasons being "*so incoherent*" that it is impossible for the reasonable reader to make sense of them is a much higher test than simply intelligibility and adequacy. Further light is shed on this high test by the observations of Jackson J. in ***Carillion Construction Ltd*** *(supra)* (with which the Court of Appeal appears to have agreed, and which is quoted at paragraph 54 of Chadwick LJ's Opinion):

*"If an adjudicator is requested to give reasons pursuant to para. 22 of the Scheme, in my view a brief statement of those reasons will suffice. The reasons should be sufficient to show that the adjudicator has dealt with the issues remitted to him and what his conclusions are on those issues. It will only be in extreme circumstances, such as those described by Clerk LJ (sic) in **Diamond**... that the court will decline to enforce an otherwise valid adjudicator's decision because of the inadequacy of the reasons given. The complainant would need to show that the reasons were absent or unintelligible and that as a result, he had suffered substantial prejudice."*

[51] Senior counsel for the pursuers submitted that the test stated in England was on all fours with the Lord Justice Clerk's statement. As the Lord Justice Clerk observed, the adjudicator is not an arbiter or a judge; there is no appeal from his decision, and his situation is quite different from a planning reporter or tribunal. All that the court is looking for is to see that he has understood the matter remitted to him and that he has issued a decision on that matter. The defenders therefore must meet a very high test in these submissions. Although the bespoke amendment to Clause 39A.6.4 introduced the normal standards of proof applicable to civil disputes, the adjudicator was nonetheless entitled to rely on his own knowledge or experience. It was clear that adjudication was a more inquisitorial procedure than litigation, and that this, together with the short timetable and the provisional nature of the decision, fitted together as elements in a coherent scheme - see Lord Reed's Opinion in the Outer House in ***Ballast*** *(supra)* at paragraph [30]. The same point is made in ***Carillion Construction Ltd*** at paragraph [86]. The particular characteristics of the adjudication procedure must be borne in mind when considering the specific criticisms made by the defenders about the adjudicator's reasons.

[52] Senior counsel for the pursuers replied to the specific criticisms as follows:-

(a) It was apparent that the adjudicator understood and considered the defenders' submissions with regard to appropriate remedy. He touched on this at paragraph 10 of the final document, the third sentence of which is at least in part a reflection of the defenders' submissions in paragraph 3.11 of their final submission. Paragraph 39 of the final document reflected precisely what the defenders argued in paragraph 3.11 of their final submission, and it is clear from paragraphs 40-42 that the adjudicator rejected this argument. He has therefore dealt with the issue before him, he agrees with the pursuers on it, and in paragraphs 40-42 he identifies various factors which support that view. He has therefore done what Jackson J. indicated in ***Carillion Construction*** that he should do - he has provided a brief statement which shows that he has dealt with the particular issue complained about and reached a conclusion on that issue.

(b) The defenders' argument before the adjudicator on this point was presented under three heads - first, there were terms which fell to be implied into the contract, and the actings of the pursuers in allowing Odeon to start works when they did were in breach of those terms; second, this breach resulted in joint contribution; and third, apportionment of losses required to follow apportionment of liability as between the defenders and Odeon. This formulation still left alive the issue of what the defenders did in fact do, and whether this caused any problems. The adjudicator touched on these arguments briefly at paragraph 10 of his final document. Although he did not deal with this further in paragraph 39, it was clear from the last sentence of paragraph 40 and paragraphs 41-43 that the adjudicator was dealing with the issue of the inter-relationship between the defenders and the problems with this building. In the dispute referred to him there were two parties, and as long as the actings of the defenders had a major contributory or causative effect to the problems with the building, that would be sufficient to fix liability. In the following paragraphs of the adjudicator's final document he looks to contribution by the defenders to the problems with the building, and whether that contribution is elided by any other factor. He reaches the view that it was not. He then observes (at paragraph 56) that the attribution of responsibility as between Odeon and the defenders is an exercise for another occasion. Although the adjudicator did not specifically refer to the defenders' argument about implied terms and the contents of paragraph 3.12 of their final submissions, it was clear that he had in mind the inter-relationship between the defenders and Odeon, and the issue as to whether the emergence of the Odeon works precluded a finding of liability for breach of contract by the defenders. The adjudicator answered this question clearly, and his decision meets the test stated in ***Diamond*** and ***Carillion.***

(c) Any problem relating to the adjudicator's decision on quantum arose only from the way in which he expressed himself in paragraphs 70-73 of the final document. Properly read, the figure of £2,633,903.24 in paragraph 71 is not an acknowledged saving. Having regard to the adjudicator's views on liability, notwithstanding a possible contribution by Odeon to the problems with the building, the adjudicator felt able to make a complete finding against the defenders. What the adjudicator did was to accept the figure of

£3,518,979.02 from the appendix at page 18 to the pursuers' submissions on quantum (No. 28 of the agreed bundle) and, although Odeon may have contributed to the problems, as they are not party to the adjudication he finds the defenders liable. This is all clear from paragraph 71 of the final document, where the adjudicator accepts the pursuers' figures. The sum which the pursuers claimed in the adjudication was approximately £4.8m, and in the appendix provision was made for six aspects of possible deductions if contested items were found in favour of the defenders. The figure which the adjudicator found in favour of the pursuers was that shown at the foot of the appendix, and included the whole possible deductions. The sum which he awarded was the minimum which he considered might possibly be found due to the pursuers, and the figure of £490,000 might or might not fall to be added that figure. Whilst one might perhaps take issue with some of the adjudicator's wording, or indeed even with his logic, any errors were internal errors. What is clear is that the adjudicator considered the detailed submissions for both parties on quantum, and reached a decision on this matter, having stated that he was satisfied that he had sufficient information to allow him to make a decision.

(g) The adjudicator was quite entitled to confine himself to a statement that he accepted the pursuers' figures. It was clear from paragraph 65 of the final document that the adjudicator had regard to information provided by the defenders as well as that provided by the pursuers. Although his reasons with regard to why he accepted that pursuers' figures are very briefly stated, he has referred to this matter and has indicated his decision on it. This is sufficient for the needs of an adjudication.

(f) On the bespoke amendment requiring the adjudicator to apply the normal standards of proof applicable to civil disputes, the adjudicator was still entitled to rely on his own knowledge and experience. There were only two standards of proof, namely civil and criminal. This provision did not require the adjudicator to hear evidence as a judge might hear evidence in a civil proof - as was observed in ***Carillion Construction***, many adjudicators are not qualified lawyers. The procedure is more inquisitorial than procedures in arbitration or litigation, and the adjudicator is not required to hear any evidence at all - it would be open to him to decide the matters referred to him on the basis of the referral and response. The bespoke addition added nothing to the obligations incumbent on the adjudicator.

[53] In considering these issues, I have at the forefront of my mind the tests states by the Lord Justice Clerk in ***Diamond*** at paragraph [31], and by Chadwick LJ in ***Carillion Construction*** at paragraphs 53 and 84. This challenge to the adjudicator's decision can only succeed if his reasons are so incoherent that it is impossible for the reasonable reader to make sense of them. In the present case, as I have already observed, the adjudicator was faced with the need to master a large number of difficult questions of fact and law and to issue a decision, with reasons, within a very tight timescale. His reasons are at times briefly stated and at times somewhat opaque, but I do not consider that they are so incoherent that it is impossible for the reasonable reader to make sense of them. Whether or not the adjudicator has reached the correct conclusion on each of these matters is not the point in these proceedings; when one looks at his final document as a whole, it is clear that he has considered the issues that were referred to him, he has considered both parties' submissions on these issues, and he has given a decision on these issues. Applying the test enunciated by Jackson J in ***Carillion Construction***, his reasons are sufficient to show that he has dealt with the issues remitted to him and what his conclusions are on those issues.

[54] I now turn to the five specific criticisms made by the defenders, as follows:-

(a) The adjudicator summarised the defenders' position with regard to appropriate remedy at paragraph 10 of the final document, and part of paragraph 39 reflects what is contained in paragraph 3.11 of the defenders' final submission. It is clear from paragraph 40 and the following paragraphs that the adjudicator agrees with the pursuers on this point, and he proceeds to deal with the case as one of breach of contract by defective performance. There is sufficient by way of reasons and that there is no force in this criticism.

(b) Although the adjudicator does not make express reference to paragraph 3.12 of the defenders' final submission, it is clear that he has considered the relationship between works carried out by the defenders and works carried out by Odeon, and the question as to whether the latter precluded a finding of liability for breach of contract by the defenders. He observes at paragraph 56 that attribution of responsibility as between Odeon and the defenders is an exercise for another occasion. It is in my view tolerably clear that he has considered the issues raised in paragraph 3.12 of the defenders' submissions, and that he has reached the decision that as long as the defenders' works were a major contributory or causative factor in the problems with the building, this was sufficient to fix liability in the proceedings before him. He was not bound by the parties' characterisations of the issues - he was entitled to characterise the issues in a way which he considered appropriate, provided that he dealt with the matters that were referred to him. Having considered the question of the relationship between the Odeon works and the defenders' works, he has reached a decision on this matter. I am of the view that his decision meets the relevant test.

(c) The way in which the adjudicator has approached quantification is perhaps less clear, and his reasons verge on the telegraphic in this respect. However, they are more intelligible when read against the material contained in the parties' final submissions on quantum. First, it should be kept in mind that despite his purported requirement that parties furnish him with a statement indicating their respective approaches to an appropriate deduction from a figure of £4,856,172, the adjudicator was satisfied that he had sufficient information to allow him to make a decision on quantum. He had read and understood both submissions on quantum and held a short hearing to allow any further submissions to be advanced. He accepted the pursuers' figures, subject

only to a query in relation to a deduction of £490,000. Looking to the figures and submissions before him, it seems reasonably clear that he regarded the sum of £3,518,979.02 brought out at the foot of the appendix to the pursuers' submissions on quantum to be the minimum to which the pursuers were entitled. Depending on how the sum of £490,000 by way of liquidate and ascertained damages claimed by the defenders in their final submission on quantum was treated, the sum to which the pursuers were entitled might remain at the figure stated in paragraph 73 of the final document, or it might be increased by anything up to £490,000. It is true that the figure of £2,633,903.24 which is referred to in paragraph 71 of the adjudicator's final document is described as an "*acknowledged saving*", which properly read, it is not - it is merely the total allowable if all six deductions are found in favour of the defenders. However, although as I have observed the adjudicator's reasons might be described as somewhat opaque in this regard, what is reasonably clear is that the sum of about £3.5m contained in paragraph 73 is the minimum figure to which he considers the pursuers are entitled. It might be that the pursuers could seek to argue that they were prejudiced by his brevity of reasoning and his approach in this regard, but they do not seek to do so in these proceedings. Prejudice in this respect (if prejudice there be) lies with the pursuers, not with the defenders. As was observed in ***Carillion Construction Ltd,*** "*the complainant would need to show that the reasons were absent or unintelligible and that, as a result, he had suffered substantial prejudice.*" I do not consider that it can be argued that the defenders have suffered substantial prejudice in this respect, nor indeed was this argued before me. I do not consider that there is force in this specific criticism.

(g) The only explanation which the adjudicator gives for finding in favour of the pursuers in the sum stated in paragraph 73 of the final document is his statement at paragraph 71 that he accepts the pursuers' figures. However, this is in my view all that was required of him. It is clear that he has considered the evidence and the submissions on behalf of both parties, and in reaching the figure stated in paragraph 73 he has made full allowance for all of the six possible deductions in favour of the defenders which are shown in the appendix to the pursuers' final submissions on quantum, and he has similarly given the defenders the benefit of any doubt that he has regarding their claim of £490,000 for liquidate and ascertained damages. He is not required to give detailed reasons as to why he accepted the pursuers' figures, as one might expect from a judge or an arbiter; it is sufficient that he shows that he has dealt with the issues remitted to him and what his conclusions are on those issues.

(f) I am not persuaded that the bespoke amendment substituting a new clause 39A.6.4 adds much, if anything, to the adjudicator's duties. There are only two standards of proof known to the law of Scotland, namely that applicable to civil disputes (being on a balance of probabilities) and that applicable to criminal proceedings (being beyond reasonable doubt). It seems improbable that any adjudicator would apply the criminal standard to adjudication proceedings, but it may be that this is all that was sought to be made clear by the amendment. I do not consider that the amendment makes it necessary for an adjudicator to require witnesses to give evidence on oath or affirmation; indeed, the adjudicator does not need to hear witnesses at all. *"Proof"* in this sense is not necessary. Clause 39A.6.5 remains unaffected by the bespoke amendment, and this entitles the adjudicator to set his own procedure and at his absolute discretion to take the initiative in ascertaining the facts and the law as he considers necessary. He may use his own knowledge and/or experience, open up, review and revise any certificate, opinion, decision, requirement or notice, visit the site of the works, obtain such information as he considers necessary from any employee or representative of the parties and others, etc. It is clear that his powers go far beyond the powers of a judge in civil proceedings, and the proceedings themselves bear little relationship to any arbitration or litigation. As already observed, they may be inquisitorial in nature, the adjudicator may use his own knowledge and may not require *"evidence"* in the legal sense of that word. All that the bespoke amendment requires him to do is to reach his decision on the balance of probabilities.

[55] For these reasons, I do not consider that there is substance to the criticisms of the adjudicator's final document based on inadequacy or unintelligibility of reasons.

The argument under Answer 7.7(vi) of the defences - breach of the rules of natural justice

[56] Put shortly, the defenders' complaint under this head is that the adjudicator issued the final document four minutes before his jurisdiction expired; in paragraph 71 he invited further submissions on quantum, but there was no realistic possibility that these could be made before his jurisdiction expired. This denied the defenders a proper opportunity to put forward their case before the decision was issued. The adjudicator's understanding of the facts or law regarding quantum was incorrect and/or incomplete as at 11.56am on 7 April 2008. Submissions from the parties (and in particular the defenders) might have been material to the adjudicator's evaluation of the issues before him and to any decision ultimately reached by him. All of this amounted to a material breach of the rules of natural justice, giving rise to at least the possibility of injustice to the defenders.

[57] Senior counsel for the defenders submitted that if there had been adequate time for them to do so, the defenders would have explained how the sum of £490,000 fitted in, and would also have submitted that not all of the sums added back in to the figures at page 18 of the pursuers' final submissions on quantum were appropriately added back in. He could not say that the defenders' further submissions would have made a difference, or what difference they would have made, but they might have made a difference and this was sufficient. The defenders were not obliged to agree to a further extension of time; it might be said that the defenders had not suffered unfairness as it was open to them to agree to such an extension, but a period of four minutes in which to read the final document and make that decision was in any event insufficient.

[58] In support of the proposition that the mere possibility of injustice is enough to invalidate the decision, senior counsel for the defenders relied on ***Black v John Williams & Co (Wishaw) Ltd*** 1923 S.C.510 (and 1924 S.C.(H.L.) 22), ***Barrs v British Wool Marketing Board*** 1957 S.C.72, ***Inland Revenue v Barrs*** 1961 S.C.(H.L.) 22 and ***Costain Ltd v Strathclyde Builders Ltd*** 2004 S.L.T.102. Senior counsel for the defenders submitted that for a challenge to an adjudicator's decision on grounds of breach of natural justice to succeed, five considerations applied - (1) the breach must not be *de minimis*; (2) the breach will be material if it has denied a party a fair opportunity to put its case; (3) it is not necessary to establish that the party has in fact suffered prejudice - the mere possibility of injustice following the breach is sufficient; (4) if the opportunity to present its case fairly is denied to a party, the normal consequence will be the invalidity of the decision against the party affected by the breach; and (5) there may be issues about severability, depending on the nature of the natural justice challenge. This may arise where, as here, the breach of natural justice challenge relates to a decision on quantum. Senior counsel for the defenders submitted that the circumstances surrounding the issue of the final document at 11.56am on 7 April 2008 amounted to a breach of natural justice as the document was issued in the absence of further submissions from the parties which the adjudicator clearly considered necessary.

[59] Senior counsel for the pursuers submitted that considerations of natural justice related to justice between the parties, namely acting fairly as between the parties, hearing each party, and allowing each party to present its case on the issues referred. There was no suggestion in the present case of unfair conduct as between the parties. The adjudicator did identify a concern as to how the figure of £490,000 fitted in, but he did not allow either party an opportunity to put forward their case on this matter. It was the pursuers' contention that the final document was the adjudicator's final decision, and that following its transmission to the parties the adjudicator was *functus*. Although he anticipated further submissions he could not enforce this. The question arose whether it was a breach of natural justice for the adjudicator to issue his final decision without allowing parties an opportunity to address this one issue. Senior counsel for the pursuers submitted that this question fell to be answered in the negative. The adjudicator clearly felt that he had to issue his decision before noon on 7 April 2008, and he treated both parties fairly in doing so. He indicated that there was one area on which he would like to have further submissions, and he gave parties a brief opportunity to decide whether to agree to further submissions, but he did not act unfairly. The alternative was for him to decline to issue any decision.

[60] In considering this point, I accept that the possibility of injustice is enough to invalidate a decision. However, there is no suggestion in the present case that the adjudicator has favoured one party against the other in the manner in which he issued his final document - it was issued electronically at exactly the same time to each party. Moreover, on the view which I have taken as to the proper construction of the adjudicator's determination of the issue of quantum, there is no possibility that the defenders have suffered any injustice, because the figure brought out in paragraph 73 of the final document is the minimum amount to which the adjudicator found that the pursuers were entitled. The adjudicator has given the defenders full credit for what he describes as "*the acknowledged saving*" at paragraph 71 of some £2,600,000. The further procedure envisaged by the adjudicator in paragraph 72 could not therefore have resulted in any reduction in the figure specified in paragraph 73 and might have resulted in an increase in that figure. It seems to me that any failure to allow reasonable time for that further procedure cannot have resulted in prejudice to the defenders. To this extent therefore, there are similarities between the present case and ***Black v John Williams & Co (Wishaw),*** in which an arbiter engaged in an admittedly improper practice by examining a witness outwith the presence of parties and their representatives. The First Division observed that this might easily have been fatal to the award, but as the Lord President observed:

"The result was that the contractor, who now seeks to avail himself of the incident in order to attack the award, was completely successful so far as that point was concerned. I am unable to see any possibility of injustice in what was actually done...."

This reasoning was upheld in the House of Lords. In the present case, if I am correct that the amount for which the adjudicator found in favour of the pursuers in paragraph 73 was the absolute minimum to which he considered that they were entitled, and that there was no possibility of any deductions being made consequent upon further procedure, I see no possibility of injustice or prejudice to the defenders.

[61] This is a very different situation from that with which Lord Drummond Young was concerned in ***Costain Ltd v Strathclyde Builders Ltd.*** In that case an adjudicator asked for an extension of time because he wished *"to discuss one point in particular with his appointed legal adviser"*. The extension of time was duly granted, and on the day on which the extended timetable expired the adjudicator found that the defender should repay forthwith the full amount withheld from the pursuer. Neither party was advised of what had taken place with the legal adviser or was invited to comment or make submissions on the advice tendered, nor did they request to do so. The defender argued that the adjudicator's decision was vitiated by a breach of the principles of natural justice because the advice given was material, to which the adjudicator would probably have attributed significance in reaching his decision, and the failure to disclose its substance and invite comments or submission amounted to a breach. Lord Drummond Young held that there was an opportunity afforded for injustice to be done. By contrast, in the present case there was no suggestion of the adjudicator taking account of additional material or advice, the contents of which he did not disclose to parties, and then proceeding, without giving parties an opportunity to make submissions on this matter, to issue a decision against the party who subsequently challenged the decision. What the adjudicator did was to state that he had read and understood both submissions on quantum and that he was satisfied that he had sufficient information to allow him to make a decision. There was an area in which he expressed a concern, but he appears to have given the benefit of the doubt in that regard to the defenders, and

to have found in favour of the pursuers for the minimum possible amount. I do not consider that it is open to the defenders in these circumstances to argue that he has breached the rules of natural justice.

The argument under paragraph (2) of the defenders' Note of Argument (No.11 of process)

[62] Senior counsel for the defenders' final submission was that in any event the pursuers' first conclusion should be dismissed as irrelevant, as it is not supported by relevant averments.

[63] This argument is developed at some length in the defenders' Note of Argument. Senior counsel for the defenders accepted that sub-heads (i) and (ii) of the first conclusion accurately reflected what the adjudicator has declared. His concern was with the opening passage of the conclusion, which opens with the words:

"For declarator that, save in any litigation which may be launched to determine whether or not the pursuer is entitled to damages from the defender ....and until any such litigation may finally resolve all dispute about that matter, the defender may not in any proceedings to which the pursuer is party, deny....".

The conclusion is therefore framed in the negative, not the positive. However, the contractual effect of the adjudicator's decision is to be found at clause 39A.8.1 of the contract, which reflects section 108(3) of the 1996 Act. This merely provides that the decision of the adjudicator shall be binding on the parties until the dispute or difference is finally determined. The defenders may deny their liability as much as they wish, even though they are contractually obliged to comply with a valid adjudicator's decision and its effect. Any declarator should therefore be cast in the positive. Moreover, there were proceedings which might determine the issues and end the provisional binding nature of the adjudication; for example, this could arise in an action in which the defenders were third parties, or in an action by the defenders for payment of sums which they claim are due to them under the contract. The terms of any declarator should leave the defenders free to argue these points in any proceedings which might determine the issue.

[64] On the question of the conclusion being cast in the negative, senior counsel for the pursuers submitted that this was the only practical way of securing the pursuers' right to enforce the adjudicator's findings. It was envisaged that there would be other proceedings in which both the pursuers and the defenders would be parties, and in those proceedings the same issues as arose in this adjudication will arise again. The pursuers were restricting the conclusion to disputes to which the pursuers were a party. If the Court had concerns about this matter, senior counsel for the pursuers invited me to put the case out By Order on this point. Senior counsel for the defenders accepted that this suggestion was sensible, and was content that once the Court had decided the substantive matters discussed above, the case should be put out By Order on this point. He reserved his final submissions on this matter until any By Order hearing.

[65] In light of parties' agreement that this point should be continued and may be argued further at a By Order hearing, it is not appropriate for me to make any further observations on this point. At this stage I shall refrain from pronouncing any interlocutor in terms of the first conclusion, and the case will be put out By Order as soon as practicable to enable parties to discuss the terms of the first conclusion. However, I did not understand parties to suggest that this procedure should preclude my pronouncing an interlocutor with regard to the second conclusion, and logically I see no reason why this should not be done. I shall accordingly sustain the first plea-in-law for the pursuers insofar as it relates to the second conclusion, and I shall sustain the second plea-in-law for the pursuers and repel the second and third pleas-in-law for the defenders. Any issues relating to the first conclusion, and to expenses, I shall continue to the By Order hearing.

Pursuers: McNeill, Q.C., M. Hamilton; Maclay Murray & Spens, LLP
Defenders: Ellis, Q.C.; MacRoberts, LLP