Neutral Citation Number: [2024] EWHC 1199 (TCC)

Case No: HT-2023-000415

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 20 May 2024

Before :

NEIL MOODY KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

DAWNVALE CAFE COMPONENTS LIMITED	**Claimant**
- and -	
HYLGAR PROPERTIES LIMITED	**Defendant**

- -
- -

Timothy Sampson (instructed by **Lovetts**) for the **Claimant**
Harry East (instructed by **C.E.Law**) for the **Defendant**

Hearing date: 9th May 2024

- -

APPROVED JUDGMENT

This judgment was handed down by the court remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be 20 May 2024 at 10.30am

NEIL MOODY KC:

I. Introduction

1. This Part 8 claim concerns the meaning and effect of a Tomlin order by which the parties settled adjudication enforcement proceedings. It also raises the question as to whether a proposed referral to a second adjudication is an impermissible referral of the same or substantially the same dispute.

2. Timothy Sampson appeared for the Claimant and Harry East for the Defendant. I am grateful to them both for their helpful and well-focused submissions.

II. The Facts

3. The Claimant, Dawnvale Cafe Components Ltd ("Dawnvale") is a kitchen and bar fit-out company. The Defendant, Hylgar Properties Limited ("Hylgar"), is a property developer. In February 2020 the parties entered into a contract for the design, supply and installation of the mechanical works at The Beacon, Hoylake, Wirral. The contract price was £631,435 plus VAT and the contract provided for payment of 40% (£252,574) on appointment.

4. By October 2020 the relationship between the parties had broken down. There is no dispute that the contract was terminated in around November 2020, but each party alleged that the other had committed the relevant repudiation. By a notice dated 8th June 2021 Hylgar referred the dispute to adjudication. The adjudicator was Mark A Smith. By the time of referral, Hylgar had paid Dawnvale £452,251.08. Hylgar sought an adjudication as to the true value of Dawnvale's work and repayment of £180,322.92 plus VAT and interest. Dawnvale denied that any amount was due to Hylgar and itself advanced a counterclaim of £147,289.25. (The counterclaim was a "smash and grab" claim advanced in the absence of a payless notice.)

5. By his decision dated 19th July 2021. Mr Smith decided that (a) Dawnvale had repudiated the contract, (b) the true value of the works at termination was £272,251.08 plus VAT, (c) Dawnvale's counterclaim had no effect on Hylgar's claim,

and (d) Dawnvale had been overpaid and should repay Hylgar £180,322.92 plus VAT as applicable (£452,574 - £272,251.08). Dawnvale were also ordered to pay the adjudicator's fees.

6. Dawnvale failed to pay the outstanding sum and so, on 9th August 2021, Hylgar issued enforcement proceedings in the Business and Property Courts in Liverpool (Technology and Construction List), action number HT-2021-LIV-000005. By those proceedings, Hylgar sought recovery of (a) the adjudicator's award of £180,322.92, (b) VAT thereon of £36.054.58, (c) the adjudicator's fees of £13,986, and (d) VAT thereon of £2,797.20. The total claimed was therefore £233,170.70. Statutory interest was claimed in addition, together with costs.

7. By a Tomlin order dated 24th August 2021 ("the Order") those proceedings were compromised. The Order provided:

ORDER

UPON the parties having agreed terms of settlement as set out in the attached Schedule.

BY CONSENT IT IS ORDERED THAT:

(1) The hearing listed for 16 September 2021 be vacated.

(2) All **further proceedings in this action** be stayed upon the terms set out in the Schedule hereto except for the purpose of enforcing those terms.

(3) Each party shall have permission to apply to the Court to enforce those terms without the need to bring a new claim.

(4) Each party shall bear its own costs.

SCHEDULE
("the Settlement Agreement")

IT IS AGREED AS FOLLOWS:

1. The Defendant shall pay to the Claimant the sum of £246,170.70 hereafter "the Settlement Sum", inclusive of interest and costs, in accordance with the following provisions:
[There followed seven sub-paragraphs allowing for payment in tranches from 27th August 2021 to 15th February 2022.]

2. The Defendant shall pay to the Claimant the Settlement Sum in accordance with the payment terms set out at paragraph 1, into the following account;
[bank details]

3. Should the Defendant fail to pay the any [sic] instalment of the Settlement Sum on the due date then the remaining balance of the Settlement Sum shall become immediately due and payable to the Claimant.

4. This Settlement Agreement shall immediately be fully and effectively binding on the parties. **The payment of the Settlement Sum is in full and final settlement of any and all claims the Claimant may have against the Defendant arising from or in connection with these proceedings.**

5. This Settlement Agreement is subject to English law and any dispute arising under or in connection with this Settlement Agreement shall be subject to the jurisdiction of the English courts.

[bold added]

8. Two years later, by a letter of claim dated 31st August 2023, Hylgar sought further losses arising from the same repudiatory breach and intimated an intention to refer a claim for these losses to adjudication in the absence of a satisfactory response. I refer to this as the "new claim". The letter claimed:

a. Costs of assessing Dawnvale's works on repudiation - £71,775.15;

b. Additional build costs - £2,852.08;

c. Remedial works - £15,000.00;

d. Delay arising from the repudiatory breach - £223,274.25;

e. Lost rent - £94,929.86;

f. Lost profit - £175,120.19;

g. Loss of contribution to overheads - £58,642.22;

h. Total: £641,594.76.

III. These proceedings

9. By a letter dated 12th October 2023, Dawnvale's solicitors rejected the new claim on the basis that the Order had resolved "any and all claims arising from the dispute between the parties."

10. By these Part 8 proceedings, Dawnvale seeks to prevent Hylgar from referring the new claim to adjudication. Dawnvale seeks the following relief:

    a. A declaration that the Settlement Agreement (Tomlin Order) dated 24th August 2021 precludes Hylgar from referring a dispute claiming further or additional relief in respect of the established breach of the Contract as now alleged or otherwise howsoever;

    b. An order prohibiting Hylgar from referring its proposed dispute claiming further or additional relief in respect of the established breach of the Contract to adjudication;

    c. A declaration that Hylgar's proposed dispute claiming further relief in respect of the established breach of the Contract does not fall within the scope of a 'dispute' for the purposes of s108(1) HGCRA and/or would be barred from being adjudicated by reason of paragraph 9(2) of the Scheme for Construction Contracts.

11. Hylgar has not opposed the use of Part 8. I consider that these issues are eminently suitable for determination under the Part 8 procedure. The meaning of the Tomlin Order is a question of contractual construction and the factual background is uncontentious. The question as to whether the new claim is part of the original dispute is a question of mixed fact and law, and again the factual background is uncontentious.

IV. The Parties' Arguments in Outline

12. In support of its submissions, Dawnvale relies upon a witness statement dated 9th November 2023 from its solicitor, Wendy Miles. Hylgar relies upon a witness statement dated 24th November 2023 from its solicitor, David Jackson.

13. Dawnvale advances two broad arguments. First, it says that the new claim is caught by paragraph 4 of the Schedule to the Tomlin Order. Secondly, it says that the new claim is barred because it seeks referral to adjudication of a dispute which has already been determined.

14. In response, Hylgar says that, upon a proper construction of the Tomlin Order, its new claim was not settled, and further that it amounts to a fresh dispute and so it can be referred to a second adjudication. Hylgar makes clear that it is not seeking to determine again the question of whether Dawnvale repudiated the contract; rather it seeks to determine its entitlement to additional heads of loss and their quantum.

15. I turn to address these arguments.

V. Is Hylgar's new claim barred by paragraph 4 of the Tomlin Order Schedule?

(a) The approach to construction

16. I was referred to the leading cases on construction including *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, *Arnold v Britton* [2015] UKSC 15, *Wood v Capita Insurance Services Ltd* [2017] UKSC 24 and *Lamesa Investments Limited v Cynergy Bank Limited* [2020] EWCA Civ 821. The approach to construction was not in dispute before me. It is well known and does not require extensive citation here. In my judgment, the correct approach was set out by Carr J (as she then was) sitting in this Court in *EE Limited v. Mundio Mobile Limited* [2016] EWHC 531 (TCC):

> [28] The law can be summarised un-controversially, the key principles emerging in a well-known series of high-level authorities including the following: *Investors Compensation Scheme Ltd v West Bromwich Building Society (No 1)* [1998] 1 WLR 896 (at 912-913); *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101; *Rainy Sky SA v Kookmin Bank Ltd* [2011] 1 WLR 2900; *Makdessi v Cavendish Square Holdings BV* [2015] 3 WLR 1373 and *Arnold v Britton* [2015] UKSC 36.
>
> [29] When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the

> background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. The court does so essentially as one unitary exercise by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the [contract], (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. Commercial common sense and the surrounding circumstances should not be invoked to undervalue the importance of the language of the provision to be construed. A court will not readily accept that people have made linguistic mistakes, particularly in formal documents, but there may be cases where it is clear in context that something has gone wrong, but it requires a strong case to persuade a court that that is the case. Nor should a court reject the natural meaning of a provision simply because it appears to have been imprudent commercially or otherwise. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed.
>
> [30] Agreements should be read as a whole and construed so far as possible to avoid inconsistencies between different parts on the assumption that the parties had intended to express their intentions in a coherent and consistent way. One expects provisions to complement each other…

17. I adopt that summary of the law.

18. There was some evidence as to the parties' subjective understanding of the Order. I disregard this as inadmissible. I have also seen a track-changed draft of the Order. That too seems to be inadmissible, though I regard it as of no assistance in any event. It was not disputed that Dawnvale proposed paragraph 4 of the Schedule. That is admissible as part of the factual context, but it was not relied upon as having any real probative value. It is relevant to observe that both parties are commercial entities with experience of construction dispute resolution and both had legal advice at the time of the Order. Mr East for Hylgar submitted that the Order should be looked at through the lens of a skilled professional with knowledge of enforcement and adjudication proceedings. I accept that point. Furthermore, it seems to me that the key features of the factual context known to both parties at the time the Order was agreed would include the following:

a. That Hylgar could seek additional sums as part of a true value final determination in court proceedings;

b. That Hylgar may have further claims arising from the repudiatory breach;

c. That Dawnvale could challenge the adjudication decision as part of a final determination in court proceedings;

d. That Dawnvale could advance its own claim arising from invoice 43808 in court proceedings.

(b) "these proceedings"

19. Turning to paragraph 4 of the Schedule to the Order, the first question is as to the meaning of "these proceedings". In *Plevin v Paragon Personal Finance Limited* [2017] UKSC 23 the Supreme Court considered the meaning of "proceedings" in the context of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012.* Lord Sumption addressed the point at [20]:

> "The starting point is that as a matter of ordinary language one would say that the proceedings were brought in support of a claim, and were not over until the courts had disposed of that claim one way or the other at whatever level of the judicial hierarchy. The word is synonymous with an action."

20. And at [35] Lord Hodge stated:

> "It is common ground that the word proceedings can bear a broad or a narrow interpretation, covering either the proceedings at one level of the court hierarchy... or the proceedings in the case at all levels of the hierarchy."

21. In the present case, the meaning of "these proceedings" in paragraph 4 of the Schedule is also informed by the phrase "all further proceedings in this action" which is to be found at paragraph 2 of the Order. The latter phrase is standard Tomlin order wording.

22. In my judgment, applying *Plevin*, the term "these proceedings" in paragraph 4 refers to the action in which the Order was made, that is the enforcement action (or the enforcement proceedings) number HT-2021-LIV-000005. If the action had proceeded

to a first instance hearing and then been appealed, those two hearings and the additional steps required to progress the case would together have constituted the proceedings. I regard this construction as straightforward and second nature to most lawyers.

23. Dawnvale submitted that "these proceedings" should be given a wide construction and that the proposed second adjudication would become in some way part of the proceedings. Dr Sampson submitted that "proceedings" should be defined as including "the underlying dispute the subject matter of the adjudication including the finding of repudiatory breach". I reject this submission. It would require the words "these proceedings" at paragraph 4 of the Schedule to bear a different meaning to "proceedings in this action" at paragraph (2) on the face of the Order. Furthermore, even if the second adjudication process were to be regarded as "proceedings", I consider that they and any related enforcement action would be different proceedings, or a second "set" of proceedings. I therefore reject the submission that that the words "these proceedings" in paragraph 4 should be construed so as to include the new claim, a second adjudication and any legal action arising from it.

(c) "arising from or in connection with"

24. Dawnvale's alternative submission was that, even if "these proceedings" were defined as the enforcement action HT-2021-LIV-000005, the words "any and all claims the Claimant may have against the Defendant arising from or in connection with these proceedings" were broad enough to catch the proposed new claim.

25. The first step in Dawnvale's argument was that the words "may have" could encompass prospective claims, although it was conceded that they would not cover claims of which Hylgar was unaware. I accept this: see *Kitchen Design and Advice ltd v Lea Valley Water Co* [1989] Lloyds LR 2, 221 at 224 per Phillips J and *Bank of Credit and Commerce International SA v Ali* [2001] UKHL 8 at [10] per Lord Bingham. I did not understand Hylgar to submit that it was unaware of the potential claims now made. In my judgment, at the time of the Order, claims of the type now advanced were plainly foreseeable to both parties as a potential consequence of Dawnvale's breach.

26. The critical point is thus whether the new claim is "arising from or in connection with" the enforcement proceedings. This wording is sometimes seen in jurisdiction and arbitration clauses, and "arising out of" is often used in contradistinction to "caused by" in liability insurance policies, but neither party referred to authority from these areas on the meaning of the wording. I drew the parties' attention to *Khanty-Mansiysk Recoveries Limited v Forsters LLP* [2016] EWHC. At [39] Sir Bernard Eder construed the same words in the context of a settlement agreement. He concluded at [40] that:

> "In my view, reference to earlier authorities as to the meaning of a particular word or phrase is often unhelpful and sometimes dangerous particularly where the context in which that word or phrase may have been used is different from the instant case or wording. Here, it is sufficient to say that as a matter of language, the words 'in connection with' are plainly of wider scope than the words 'arising out of'."

27. I note also the comments of Lewison LJ in the same case in the Court of Appeal [2018] EWCA Civ at [36] where he held that the phrase "in connection with" was protean and "takes its meaning from the context in which it is used."

28. I agree that these words need to be construed in their specific context. I agree also with Sir Bernard Eder's view of the distinction between the two terms. In my judgment, "arising out of" imports a causal relationship and a closer, more proximate relationship with the proceedings than "in connection with".

29. Neither party suggested an example of a claim or head of loss which could fall within the category of "in connection with" but not "arising out of". Dawnvale's submission was that all the new heads of loss were at the very least "connected with" the enforcement proceedings. Hylgar argued that the new claim neither arose from nor was connected with the enforcement proceedings.

(d) Conclusion

30. In my judgment the new claim is not caught by paragraph 4. It neither arises from, nor is it connected with the proceedings, for the following reasons:

    a. First, I consider that if these two commercial parties, acting with the benefit of legal advice, had intended to settle all potentially related future claims, they

would have said so. In particular, they would most likely have used wording which achieved that objective by referring to all claims arising from or in connection with one or all of "the contract", "the works" or "the dispute(s)"; they would not have referred to claims arising from or in connection "these proceedings". (It is notable that Dawnvale's solicitor's letter of 12th October 2023, which responded to the new claim, did not refer to the wording of the Order but instead said that the Order had resolved "any and all claims arising from the dispute between the parties.")

b. Second, if paragraph 4 was intended to settle all potentially related future claims, I consider that it would have expressly bound both parties. It was an oddity of Dawnvale's position at the hearing that it was required to argue that its own future claims were barred even though paragraph 4 referred only to the Claimant. I consider it unarguable that the paragraph was intended to bind both parties. If that is what the parties had intended, they would have said "the parties" or identified both the Claimant and Defendant.

c. Third, Mr East submitted and I accept that the purpose of paragraph 4 was to prevent Hylgar "coming back for more"; in other words re-arguing the true valuation of Dawnvale's works by way of a final determination in court proceedings. I agree that this makes sense of the paragraph.

d. Fourth, I consider that, as a matter of language, the new claim does not "arise from" the enforcement proceedings. There is no causative relationship with the proceedings. It could be said to arise from the contract or the works or the dispute between the parties, but not - as a matter of language - from the enforcement proceedings. Likewise, I consider that, as a matter of language, the new claim is not "connected with" the proceedings. It strikes me as a very odd use of language to describe the new claim as "connected with" the enforcement proceedings save in the most indirect manner.

e. Fifth, in reaching these conclusions on construction, I do not consider that it is necessary to identify different claims or heads of loss that could fall into each of the categories of "arising out of" and "in connection with". That could be

regarded as untidy, but that is sometimes the result when parties have not thought carefully about what they intend their wording to achieve. But, in any event, to the extent that it is necessary to do so, I would hold that a claim for legal costs would be an example of a claim "arising out of" the enforcement proceedings, whereas a claim by Hylgar for a final determination of the true value of Dawnvale's works would not arise out of the enforcement proceedings, but it would be a claim "connected with" them because it would cover precisely the same subject matter.

31. I consider that this construction is in accordance with the parties' intentions objectively construed. The effect of the Order was that Hylgar received its money and Dawnvale was given time to pay. Dawnvale also received the security of knowing that Hylgar could not reopen the true value of Dawnvale's work in a final determination. Dawnvale's entitlement to seek a final determination was unaffected. Hylgar's entitlement to refer further losses to adjudication was also unaffected. In my judgment this construction makes commercial sense.

(e) Estoppel

32. For completeness, I should address Dawnvale's estoppel argument. Dr Sampson submitted that the Order comprised mutual promises that neither party would bring any further claims arising from the contract. He argued that Dawnvale acted in detrimental reliance upon the promise and Hylgar are now estopped from bringing further claims. I reject this submission. First of all, there were no "mutual promises"; paragraph 4 binds Hylgar, not Dawnvale. Secondly, the Order did not prohibit further claims "arising from the contract", only those arising from or connected with the "proceedings". But in any event, the Order was a binding agreement. There was no representation and no convention. There is no room for an estoppel.

VI. Is the proposed second referral an impermissible attempt to refer the same dispute?

33. Dawnvale submits that Hylgar's proposed second adjudication is impermissible as it is an attempt to refer to adjudication the same or substantially the same dispute as has

already been decided. Dawnvale relies upon paragraph 9(2) of the *Scheme for Construction Contracts* which provides:

> "An adjudicator must resign where the dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication."

34. The issue in the present case, as it crystallised in the course of argument, is this: is it permissible for Hylgar to refer to adjudication a claim for new heads of loss arising from the same repudiatory breach of contract as was determined against Dawnvale in the first adjudication? Does this amount to the same or substantially the same dispute?

35. There is a great deal of caselaw on the question of what amounts to the same or substantially the same dispute. Surprisingly, neither party could identify a previous decision where this precise issue had arisen. It is not necessary for me to review the caselaw in detail because it has recently been the subject of comprehensive analysis by Coulson LJ in *Sudlows Limited v Global Switch Estates 1 Limited* [2023] EWCA Civ 813. He summarised the relevant principles at [55] to [59]:

> "…I consider that there are three over-arching principles to be applied by an adjudicator, or an enforcing court, when considering arguments of overlap.
>
> 56. The first is that the purpose of construction adjudication is not easy always to reconcile with serial adjudication (paragraphs 32 and 33 above). If the parties to a construction contract do engage in serial adjudication, and then inevitably get drawn into debates about whether a particular dispute has already been decided, the need for speed and the importance of at least temporary finality mean that the adjudicator (and, if necessary, the court on enforcement) should be encouraged to give a robust and common sense answer to the issue. It should not be a complex question of interpretation of documents and citation of authority.
>
> 57. The second is the need to look at what the first adjudicator actually decided to see if the second adjudicator has impinged on the earlier decision (*Quietfield, Harding v Paice*, *Hitachi*). Of course it can be relevant to consider the adjudication notice, the referral notice and so on, but **what matters for the purposes of s.108 and the paragraphs of the Scheme noted above, is what it was, in reality, that the adjudicator decided. It is that which cannot be re-adjudicated.** The form and content of the documentation with which he was provided is of lesser relevance and, as was pointed out in *Harding v Paice* and *Hitachi*, can be misleading.
>
> 58. The third critical principle is the need for flexibility. That is the purpose of a test of fact and degree. It is to prevent a party from re-adjudicating a claim (or a defence) on which they have unequivocally lost (*HG Construction, Benfield*), but to ensure that what is essentially a new claim or a new defence

> is not shut out. In this way, the re-adjudication in *Carillion v Smith* of the same claims, where the only differences were the figures, was impermissible whilst a new, wider, claim or defence was permissible, even if it included elements of a claim which had been considered before, such as in *Quietfield*, and *Balfour Beatty*. Indeed, I consider that the result in each of the reported cases to which I have referred is the product of common sense and fairness.
>
> 59. Whilst I accept that it is not an invariable guide, one way of at least testing whether the correct approach has been adopted is to consider whether, if the second adjudication is allowed to continue, it would or might lead to a result which is fundamentally incompatible with the result in the first adjudication. If in that second adjudication, one or other of the parties is asking the adjudicator to do something that is diametrically opposed to that which the first adjudicator decided, then that may be an indication that what they are seeking to do is impermissible."
> [bold added]

36. I gratefully adopt this summary of the relevant principles. I note in particular the emphasis on the need to identify what the first adjudicator actually decided, and to ensure that the second adjudication does not lead to a result which is fundamentally incompatible with the result in the first adjudication. Put in that way, it seems to me that the answer in the present case suggests itself. The first adjudication decided that Dawnvale was in repudiatory breach of contract, and it determined the true value of the work undertaken prior to that time. The second adjudication is intended to determine the recoverability and value of certain heads of loss consequential upon the repudiation. To my mind there is no overlap, and there is no question of the second adjudicator deciding the same or substantially the same dispute as was decided in the first adjudication. If the position were otherwise a referring party would be required to bring its entire claim encompassing all its heads of loss to adjudication at the same time. But (as with the consequential losses in this case) some heads of loss (for example delay) may not become apparent for some time. Such an approach would lead to delay in referring matters to adjudication and could obstruct rather than promote cashflow. That would not be consistent with the overriding approach to adjudication which is to avoid undue technicality, facilitate cashflow and pay now, argue later.

37. In reaching this decision, I have not overlooked *Carillion Construction Ltd v Smith* [2011] EWHC 2910. As Dawnvale points out, at [56(h)] Akenhead J held:

> "One strong pointer as to whether disputes are substantially the same is whether essentially the same causes of action are relied upon in the earlier and later notices of adjudication and referral notices…"

38. Dawnvale says that the cause of action will be the same in both adjudications. I agree that in many cases this will be a strong pointer as to whether the disputes are substantially the same. However, in the present case, the second adjudication will determine the scope and extent of losses arising from repudiatory breach of contract; the question as to whether there was a repudiation will not arise for decision. On these facts I consider that there is no overlap.

39. Accordingly I conclude that Hylgar is not prevented from referring its proposed second dispute to adjudication. This means that Dawnvale is exposed to a claim for additional heads of loss arising from the second adjudication, but my construction of the Tomlin Order means that Dawnvale is not restricted in any way from challenging either the first or second adjudication by way of a final determination in court proceedings.

VII. Conclusion and Disposal

40. Accordingly I conclude that:

    a. Paragraph 4 of the Schedule to the Tomlin Order does not prevent Hylgar referring to a second adjudication the claims advanced in its solicitor's letter dated 31st August 2023;

    b. If the claims advanced in Hylgar's solicitor's letter of 31st August 2023 are referred to adjudication, that will not entail the adjudicator deciding the same of substantially the same dispute as was decided by Mr Smith.

41. I therefore decline to make the declarations sought and I dismiss these proceedings.

42. I invite the parties to agree an Order giving effect to this Judgment, and any consequential matters including costs. This should be done within 7 days of hand-

down. If agreement cannot be reached, then short written submissions (limited to 3 sides) should be exchanged. I will then decide any disputed matters on the papers or, if either party requests it, I will list the matter for a hearing.