Ericsson AB v EADS Defence and Security Systems Limited

Case reference:
[2009] EWHC 2598 (TCC)
Thursday, October 22, 2009
Key terms:
Injunction – collateral adjudication and mediation
EADS engaged Ericsson to develop and supply software and provide software support services. Ericsson started work on the project in 2007 and had originally planned to integrate its software into a database known as HPNS. However, by late 2008, having experienced problems with the HPNS, it was abandoned and a replacement database was to be used. The delivery date for the new system was 7 January 2009, but by November 2008 Ericsson reported that it would not be delivered until January 2010.

The parties reached an agreement to alter the delivery date to 31 August 2009. EADS issued change control notes stating that it would pay the costs of the change, but reserved its rights.

The date for delivery slipped to 30 September 2009 and was further delayed. Ericsson then served notice of its intention to refer two issues to mediation: the dispute in general surrounding the HNPS database; and whether Ericsson was obliged to deliver the software system by 30 September 2009.

Two days thereafter, EADS wrote to Ericsson purporting to give notice of material default. Ericsson took issue with it. The same day Ericsson gave notice of adjudication pursuant to the contract's dispute resolution clause regarding the disputes that had been previously referred to mediation. EADS refused to accept the notice as the dispute had already been referred to mediation.

There were two applications for injunctions before the court: Ericsson sought to prevent EADS from terminating the agreement between the parties before the adjudication and the EADS sought an order preventing Ericsson from taking any further steps in the adjudication and a declaration that any decision of the adjudicator would be invalid.

The Judge considered the test applicable to interim injunctions. While Ericsson had a real prospect of success of obtaining the injunction at full trial the Court was not concerned with determining the final rights of the parties at this stage. He considered that damages would be an adequate remedy between two very substantial commercial parties that had freely

negotiated their own contract. In addition, any damage to reputation that Ericsson may have suffered would be for a relatively limited duration.

Further, the contract provided that Ericsson could refer a matter to both mediation and adjudication. It stated that the parties "may" refer the matter to mediation or adjudication, not that it "shall" refer a dispute to one or the other. Ericsson could pursue remedies in adjudication even though they had sought such remedies via mediation.

Finally, the contract as stated that adjudicators' decisions shall be valid and enforceable by the court, subject to manifest error.

Both applications were dismissed.