

Alexander Hickey obtains an order for delivery up of arbitration documents from agents

In *AMEC Foster Wheeler Group Ltd v Morgan Sindall Professional Services Ltd* [2015] EWHC 2012 (TCC), Alexander Hickey represented the successful claimant who sought declarations against four defendants that they were bound to provide information and documentation arising out of two sets of arbitrations in which the defendants were involved, as well as delivery up of those documents.

The claimant had sold its design and project services business to two defendants, another acted as guarantor, the last was an assignee. However, the claimant was unable to novate a relevant sub-contract to the defendants, so that they agreed to perform it on the claimant's behalf. Two arbitrations were commenced under the subcontract. At least one of the defendants was running each of those arbitrations. The claimant had no involvement, but it had "well-founded" concerns that it might be at risk under the terms of the sub-contract and, accordingly, had a direct financial interest in the arbitrations' outcome.

Alexander Hickey's principal submission was that the defendants had been appointed to act as agents on behalf of the claimant, and that the documents relating to these arbitrations came into their possession as a consequence of that agency. He argued that the claimant was therefore entitled to have its own copies of the documents pursuant to the ordinary rules of agency. Mr Justice Coulson agreed.

The defendants advanced numerous other arguments based upon pre-action protocol compliance, alleged restrictions in a supplemental agreement, distinctions between defendants and confidentiality. They were all dismissed. Mr Justice Coulson described "the question of confidentiality as a smokescreen, the last in the line of obstacles put up by the defendants to try and avoid their obligations to [the claimant] to provide arbitration documents." He concluded: "When taken together, I regret to say that the points raised ... created the impression that the defendants would prefer to take any point (good, bad or indifferent), rather than provide the documents to [the claimant]. That may serve only to confirm [the claimant's] suspicion that all is not well with these arbitrations."