

BRIEFING

## Irish courts provide guidance on arbitration disputes

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Some recent court decisions provide valuable guidance to the construction sector in Ireland on the principles that apply when the requirement to arbitrate is at issue, as well as giving the courts an opportunity to re-confirm their support for the arbitral process.



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**Facts:** In XPL Engineering v K&J Townmore Construction Ltd [2019] IEHC 665 K&J Townmore Construction Ltd (the “**contractor**”) engaged XPL Engineering (the “**sub-contractor**”) to provide mechanical works on projects under two contracts. Differences arose between the parties and the sub-contractor issued court proceedings to recover sums claimed. The contractor responded that the contracts required that disputes go to arbitration. Four years later, the sub-contractor issued summary proceedings to recover the sums it claimed. While the sub-contractor agreed that parts of the dispute could go to adjudication, it wanted to obtain summary judgment for the remainder of the claim where it said there was no dispute because the contractor had acknowledged that certain works were done.

**Legal framework:** There is an obligation on a court, where there is an arbitration agreement, to refer the dispute between the parties to arbitration if one of the parties so requests. This obligation is in Article 8(1) of the UNCITRAL Model Law of International Commercial Arbitration, incorporated into Irish law by the Arbitration Act 2010.

**Decision:** There were two key questions for the court. Firstly, were the mandatory conditions in Article 8(1) met? Secondly, was there a dispute for the purpose of Article 8(1) and the arbitration clauses in the contracts? It would have been preferable for the sub-contractor in this scenario to obtain a summary judgment from the court of the amount it claimed, rather than having to run the dispute in arbitration. However, for both questions, the answer was yes, and the court stayed the court proceedings and ordered that the matter be referred for arbitration.

**Comment:** This judgment provides helpful guidance on determining whether a dispute has arisen for the purposes of arbitration. Essentially, the Irish High Court endorsed the leading UK authorities, including AMEC Civil Engineering Ltd v Secretary of State for Transport [2005] EWCA 9 Civ 291, and went on to set out key principles encapsulating the various authorities to date. A key theme is that, once there is a dispute, it is not for the courts to look at the merits of the dispute in deciding whether its obligation to refer the matter to arbitration is engaged. A broad interpretation should be given to the term “dispute” in an arbitration agreement, particularly where this respects the assumption that the parties intended a “one-stop” shop for determining their disputes. The court should be willing to find that a dispute exists in the absence of an acceptance of liability in respect of the relevant claim. Further, the court should lean in favour of finding that a dispute exists, if the parties disagree as to whether a dispute exists at all.

This judgment also provides another example of the Irish courts’ continued support for the arbitral process. The court discussed the mandatory nature of Article 8(1): where its conditions are met, the court is obliged to refer the dispute to arbitration. (It is worth noting that in another recent High Court judgment, K & J Townmore Construction Ltd v Kildare and Wicklow Education and Training Board [2019] IEHC 666, the Court found that the conditions of Article 8(1) were not met because a later agreement between the parties to refer the dispute for expert determination had the effect of disapplying the conciliation and arbitration clauses in the original building contract). The court also took the opportunity to confirm that, in situations in which it is not obliged to refer the parties to arbitration under Article 8(1), it may still have an inherent jurisdiction to stay proceedings where there is an arbitration agreement.

This is proving a busy areas for the courts, so .... watch this space!



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