

Court of Appeal judgment handed down on abuse of process in £165m misrepresentation claim

The Court of Appeal has this morning handed down judgment in (1) *Outotec (USA) Inc (2) Metso OYJ (formerly Metso Outotec OYJ) v MW High Tech Projects UK Limited* [2024] EWCA Civ 844.

The dispute concerns an energy from waste (EfW) project in Hull, which involves the gasification of refuse derived fuel. The Hull project is one of 3 such process plant contracts between the parties. [Simon Hale](#) acts for the claimant main contractor, MW High Tech, in relation to all three disputes.

On each project, MW High Tech's case is that Outotec's technology: (i) was sold pursuant to a series of fraudulent or negligent misrepresentations as to its capability, and (ii) failed disastrously at all three sites. MW claims many £hundreds of millions in damages. Outotec denies the claims.

The parties were previously involved in a 5-week trial about the Hull project before Pepperall J in 2021. The Judge determined various issues of termination, breach of contract, delay, defects and counterclaims by Outotec [2022] EWHC 3275 (TCC).

After that judgment was handed down in December 2022, MW High Tech then brought a second action against Outotec alleging fraudulent and negligent misrepresentation, and claiming (in relation to Hull alone) damages of over £165m.

Outotec applied to strike out that claim as an abuse of process, among other applications. At first instance, HHJ Stephen Davies declined to strike out the claim. Outotec appealed.

On appeal, despite the first instance Judge's findings: (i) that MW High Tech had breached the guidelines set out in *Aldi Stores Ltd v WSP Group PLC* [2007] EWCA Civ 1260; and (ii) that the misrepresentation case could and should have been brought at the time of the original action, the Court of Appeal accepted Simon's arguments that Outotec could not show sufficient vexation or oppression to justify the claims being struck out. The appeal was therefore dismissed.

The arguments were wide-ranging, but central to the outcome was the fact that similar allegations of fraud and negligence will have to be tried in relation to the further EfW projects between the same parties, in further trials. Thus, Outotec had always faced the prospect of being "vexed twice" in relation to the misrepresentation claims.

The decision is an important judgment on the law of abuse of process, stemming from *Johnson v Gore Wood*. In his leading judgment, Coulson LJ identified the key issue of law at [1]:

"The appeal raises, in unusual circumstances, a particular issue as to whether a breach of the guidelines set out in Aldi Stores Ltd v WSP Group PLC [2007] EWCA Civ 1260; [2008] 1 WLR 748 ("the Aldi guidelines") can be sufficient, or whether it is also necessary to demonstrate vexation/ oppression/ harassment sufficient to justify striking out the claim as an abuse of process. If the latter is necessary, can Outotec show it here?"

Coulson LJ reviewed the authorities and determined that it was a necessary element of the abuse of process analysis

that a defendant must show vexation, oppression or harassment sufficient to justify striking out the claim [53]. His Lordship also considered that where, as here, there had had been a breach of the *Aldi* guidelines, the analytical framework used for considering relief from sanctions was a useful approach [52]:

“In my view, whilst I do not suggest that the whole panoply of the rules relating to relief from sanctions are appropriate here, it is incumbent on any court faced with an application to strike out, particularly where there has been a breach of the Aldi guidelines, to consider very similar matters as those which arise under the three stages of Denton: the seriousness and significance of the breach, the reasons for it, and all the circumstances of the case (including the consequences if the sanction remained, or if it was lifted). This chimes with the references in Johnson v Gore Wood and Aldi to the public and private interests that will always need to be considered on a strike-out”

All three of their Lordships delivered judgments, with Stuart-Smith LJ and Arnold LJ expressing disagreement on certain limited aspects of the reasoning, and disagreeing with one another on one aspect of the findings below. However, they nevertheless reached the same conclusion as Coulson LJ, and the appeal was unanimously dismissed.

The Hull dispute will now proceed to an 8-week trial in February 2026. There is also a further 5-week ICC arbitration in relation to another of the projects in August and September 2024.

Simon is instructed by HFW, London.

A full copy of the judgment is available [here](#).