



LEGAL BRIEFING

Treasure & Son Ltd v Martin Dawes

[2008] EWHC 2181 (TCC), Mr Justice Coulson

The Facts

In an earlier decision of Mr Justice Akenhead enforcing an adjudicator's decision, Mr Dawes was ordered to pay a total judgment debt of £1,239,310.12. This was paid into Treasure's bank account, and had in fact come from the account of Hayley Dawes, the daughter of Martin Dawes. The parties had ongoing arbitration proceedings between them in which Treasure argued that the debt had not been properly discharged at all, and issued proceedings under CPR Part 8 to seek a determination of the issue.

Mr Dawes' case was that the money that was transferred from his daughter's account on 7 November 2007 was his own money, having been loaned to him by his son and daughter. In the alternative the sums were paid for and on his account by Hayley, with either his prior authority or his subsequent ratification. It was Treasure's case that, despite having been given opportunities to do so, Mr Dawes never clearly explained the basis of his case, either as to direct payment or payment made on his behalf.

The Issue

Had the judgment debt been discharged through payment from Mr Dawes' daughter's account?

The Decision

Mr Justice Coulson expressed his doubt as to the necessity of the proceedings from the very beginning of his judgement:

This is an extremely unusual dispute. Even now, as I give judgment, I remain in some doubt as to how and why such a dispute has been allowed to get this far and I question the underlying tactical considerations, which I cannot begin to fathom, that could be said to justify the extensive costs that these applications have engendered.

He went on to find that Treasure had some rather unrealistic concerns in this matter and that Hayley Dawes had clearly paid the sums on behalf of her father and that the debt had been discharged.

First, I am bound to conclude that that is the only sensible and realistic conclusion to be drawn from the evidence. After all, as at November, those acting for Mr Dawes asked Treasure to identify precisely the sum that was due following the judgment of Akenhead J. That having been done, arrangements were made for the sum to be paid into Treasure's account. That sum was paid by way of the transfer that, as we have seen, originated from Hayley Dawes' own account. Given the close family ties and that evidence, it seems to me that it would be absurd to say that that money was not paid for and on account of Hayley Dawes' father.

Comment

This is an unusual case and one that again shows the Technology & Construction Court's pragmatic approach to the enforcement of adjudicator's decisions. The Judge expressed concern as to the necessity of this application and the wasted costs involved. Parties are being encouraged by the Courts to pay adjudicator's decisions rather than attempt to avoid the result of those decisions by raising 'tactical considerations'.

Nicholas Gould
November 2008
