



LEGAL BRIEFING

Claymore Services Limited v Nautilus Properties Limited

TCC, HHJ Jackson [2007] EWHC 805

The Facts

Nautilus, the leasehold owner of a London property, engaged Claymore to refurbish and convert the property into a hotel, restaurant, nightclub, and a number of bars. The work began in 2001, under a letter of intent, and was completed in 2002. The parties did not conclude a formal contract. Following completion, a dispute arose regarding the final account. In 2004, Claymore referred the dispute to adjudication in order to recover outstanding sums.

Nautilus challenged the jurisdiction of the adjudicator on the ground that there was no contract. The Adjudicator accepted that there was no contract between the parties, but decided, somewhat surprisingly, that he did in fact have jurisdiction and awarded Claymore £575k. The adjudication was subsequently discontinued following a case management conference in the TCC court which held that the adjudication would not be enforced. Claymore then commenced proceedings in 2006, claiming £1.5M on a quantum merit basis as there had been no contract. The dispute was settled prior to the trial; however, the question of interest was unresolved.

The Issues

The only issue remaining before the court related to interest; namely the period during which interest accrues, and the appropriate rate of interest.

The Decision

Mr Justice Jackson held that interest should only run from the date when the sum due is ascertainable. In this case, for the quantum merit claim, it was from the time Claymore's final account had been presented to Nautilus and they had been given a reasonable amount of time to appraise it. When considering Claymore's delay in commencing the present action and whether interest should be recoverable during that period, he found that the delay which occurred between the date of the Adjudicator's decision and the date of the letter of claim was excessive. Therefore, as Claymore was guilty of one year's unreasonable delay, the interest payable during this period would be reduced by 50%.

Mr Justice Jackson then went on to consider the appropriate rate of interest and held that the Judgments Act rate of interest (8%) is not appropriate in the commercial context of a dispute between two businesses. "The Judgments Act rate does not reflect the loss to the claimant from being kept out of its money." He therefore used his discretion and awarded interest at 2% over base rate.

Permission to appeal was refused.

Comment

The Judge decided in this case that the interest should reflect the actual

commercial business losses. He held that the best way to do this was to award 2% over base rate, rather than the usual 8% overall. In addition, he also took into account the delay by the claimant in pursuing their claim. In this case, he decided that there was an unreasonable delay of about one year. He therefore reduced the interest by 50% during that period.

The case serves to demonstrate that Judges are willing to take into account the circumstances of a particular case and the nature of the parties when awarding interest, rather than simply award the usual judgment rate of 8% across the entire period.

Nicholas Gould
February 2008