



LEGAL BRIEFING

Moorside Investments Ltd v DAG Construction Ltd

High Court, Chancery Division HHJ Wilson [2007] EWHC 7795/07

The Facts

This was an application by Moorside Investments Ltd (“Moorside”) to restrain the presentation of a winding up petition based on a statutory demand by DAG Construction Ltd (“DAG”). The dispute arose out of a construction contract that was partly oral and partly in writing. The contract was partly made on 11 October 2006 and in relation to other parts after this date.

DAG started work on 16 October 2006. There was no contractual completion date and a number of delays occurred in the completion of the works. DAG submitted a number of invoices to Moorside, some of which were unpaid. DAG then left site without finishing the works. Moorside alleged that they had spent money repairing and completing defective works.

The Issue

Was there a genuine dispute regarding the amounts specified in the statutory demand?

The Decision

There was a genuine dispute regarding the amounts specified in the statutory demand. The correspondence showed that Moorside was concerned about delay and inadequate work for some months prior to the statutory demand being posted to them. Therefore these concerns were not ‘trumped up’ in order to resist a statutory demand. DAG did not deal with the complaints of delays or defective works before issuing the statutory demand. The Judge concluded that both sides had claims that were not frivolous and each and every claimed reduction in the amount owing was a bona fide claim of a substantial nature. Therefore Moorside’s claim was a bona fide, genuine and substantial claim and the application to present the presentation of a winding up petition succeeded.

Comment

This case serves as a reminder that statutory demands should only be served in respect of undisputed debts. If, as in this case, the party who receives the statutory demand, is able to show that there is a genuine dispute regarding the amounts claimed in the statutory demand, a winding up petition will not be granted and the unpaid party’s costs in serving the statutory demand and defending a court application to restrain the winding up petition will be wasted.

Charlene Linneman
March 2008