



LEGAL BRIEFING

Adonis Construction v O'Keefe Soil Remediation

[2009] EWHC 2047 (TCC), Mr Justice Christopher Clarke

The Facts

O'Keefe, a soil remediation contractor, carried out testing and soil stabilization for a project on which Adonis was the main contractor. O'Keefe submitted a quotation for the work in November 2007 with various caveats. There were then exchanges between the parties, including the pre-start meeting and various emails. Work commenced and, after a dispute arose, issues were referred to an adjudicator. This application was for summary judgment to enforce the adjudicator's decision of 22 May 2009.

O'Keefe refused to pay the amount awarded in the decision, arguing that it was made without jurisdiction as there was no construction contract in writing pursuant to Section 107(1) of the HGCRA.

The Issue

The main issue was whether the contract was formed by O'Keefe's acceptance of Adonis' order sent on 5 March 2009 or by a letter of intent, such that there was an entire contract in writing.

The Decision

The Judge did not accept that the order was an offer capable of acceptance, because the email said that it attached "our draft sub-contract order". There was therefore no clear and concise offer that was capable of acceptance.

In the alternative, Adonis relied upon an argument that a contract was formed by the letter of intent, the agreed minutes and the commencement of the works. The letter of intent recorded the price, the construction period and the work to be carried out. However, the Judge concluded that the letter of intent made it clear that it was not to be the sub-contract. This was because the letter of intent stated that it was Adonis' intention to enter into a sub-contract, and then set out what would happen if the sub-contract was not entered into. The details in the letter of intent were also inadequate in terms of identifying the precise scope of the works. Further, on 5 March 2009 there appeared to be an oral agreement between the parties dealing with certain risks.

In addition, the adjudicator awarded costs on the basis of powers provided to him in the contract. If the letter of intent had formed the contract then it would still not have included the appropriate provisions, and so the adjudicator would have exceeded his jurisdiction by relying on terms that were not incorporated in this alternative contractual analysis.

Comment

In conclusion, the Judge held that the written contract had not been formed as required under Section 107(1) of the HGCRA. The decision was, as a result, not enforced.

Nicholas Gould
January 2010