



LEGAL BRIEFING

Euro Construction Scaffolding Ltd v SSLB Construction Ltd [2008] EWHC 3160, TCC

The Facts

Euro Construction Scaffolding Ltd (“Euro”) was engaged by SSLB Construction Ltd (“SSLB”) to provide scaffolding in relation to a swimming pool. Euro had provided a written quotation for scaffolding in December 2007. The parties disagreed as to what occurred next: SSLB asserted that it called Euro to confirm that it could provide a sufficiently robust solution to hold back the earth and allow SSLB to build the basement safely. SSLB said that Euro provided this confirmation and SSLB placed its order. SSLB alleged that Euro’s scaffolding was not fit for these purposes as it buckled and had to be repaired and then removed as it allegedly was a safety hazard.

Disputes arose between Euro and SSLB that were referred to adjudication. The referral did not mention the December 2007 quotation but rather claimed that the work done after this time was a variation to a previous contract between the parties. The associated jurisdictional argument with this point was no longer maintained by the time of the service of Euro’s reply. However, SSLB argued that all the terms of the contract were not in writing as SSLB alleged that it was also a term of the contract that the scaffolding be fit for purpose.

The adjudicator awarded £22,496.60 plus interest to Euro.

The Issues

- (i) Did the parties give the adjudicator jurisdiction to decide whether he had jurisdiction?
- (ii) If not, did the adjudicator have jurisdiction in any event?

The Decision

Mr Justice Akenhead held that although SSLB had made an effective reservation of its position and therefore did not give the adjudicator jurisdiction, the adjudicator had jurisdiction to decide the matter as:

- (i) the courts are encouraged (as are adjudicators) to examine critically assertions that an adjudicator did not have jurisdiction;
- (ii) SSLB’s defence was based on an implied term of fitness for purpose but this was based on the oral communication between SSLB and Euro in December 2007;
- (iii) SSLB’s evidence before the Court and before the adjudicator was consistent with this approach as SSLB gave evidence that the scaffolding ‘could’ rather than ‘would’ be fit for purpose;
- (iv) SSLB’s statements about what occurred in the conversation in December 2007 were different than what was stated by SSLB in subsequent correspondence;
- (v) The December 2007 quotation itself was not consistent with a requirement by SSLB before the quotation was submitted;

-
- (vi) The onus was on SSLB to show that on the issue of whether there was an oral term, it had a real prospect of establishing its case; and
 - (vii) The parties did not make the issue that if the fitness for purpose term was implied, what would have been a contract in writing for the purposes of Section 107 of the Housing Grants Act would not be such a contract.

Therefore the Judge enforced the decision.

Comment

The Judge again emphasised that a party objecting to an adjudicator's jurisdiction must make a clear and full reservation of its rights. This had occurred in this case. However, by running a defence on the basis of the alleged oral term of the contract, the Judge held that the parties had given the adjudicator jurisdiction to determine the matter. This case reinforces the court's reluctance not to enforce an adjudicator's decision.

Charlene Linneman
January 2009
