Legal Briefing

RTS Flexible Systems Ltd v Molkeroi Alois Müller Gmbh & Company KG (UK Production)

[2010] UKSC 14, Lord Phillips (President), Lord Mance, Lord Collins, Lord Kerr and Lord Clarke

The Facts

This case was an appeal by Müller from a decision of the Court of Appeal (see RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG [2009] EWCA Civ 26.

Müller engaged RTS to engineer, build, deliver, install and commission automated equipment to package yoghurt pots. On 16 February 2005 RTS submitted Quotation J. This provided for, amongst other items, a fixed price of £1,682,000, technical information and specifications, as well as proposed liquidated damages and stage payment dates.

On 21 February 2005, Müller issued a letter of intent ("LOI") accepting the 16 February 2005 letter, 'subject to contract'. Clause 48 of the amended MF/1 conditions, which were to form the main contract, provided that the contract had to be signed before it became effective. The LOI was extended until 21 February 2005 and then again until 27 May 2005. The contract negotiations, whilst slow, were progressing significantly and, as at 5 July 2005, the parties had agreed the MF/1 conditions. However, there were seventeen schedules ("the Schedules") to be attached to the contract, some of which were left uncompleted. On 25 August 2005 there was a meeting to discuss the problem, at which there was an agreed variation of the delivery plan. The MF/1 conditions were never signed.

A dispute arose between the parties. The parties asked the court to determine whether there was a binding contract between them following the expiry of the LOI and, if so, what the terms of that contract were. The High Court decided that a contract existed but excluded the MF/1 conditions. The Court of Appeal overturned that decision and found that no contract existed following the expiry of the LOI.

The Issue

Did the parties enter into a contract following the expiry of the LOI and, if so, on what terms?

The Decision

The Supreme Court overturned the decision of the Court of Appeal and found that a contract did exist following the LOI. In contrast to the High Court's decision, the Supreme Court held that the contract included the MF/1 conditions as agreed at 5 July 2005 and varied on 25 August 2005. Whilst the High Court found that there were still some terms to be agreed, and that this precluded the MF/1 conditions from applying, the Supreme Court decided that these terms were not essential and it was not therefore necessary to agree them before a contract could be concluded.

Further, by their conduct, the parties had affirmed the existence of the contract by carrying out the works, making payments, and by varying the contract on 25 August 2005. In agreeing the variation to the delivery programme, the parties were implicitly accepting that there was a contract already in place and to deny the existence of one would therefore make no commercial sense.

Finally, the Supreme Court decided that the requirement that the contract had to be signed before it became effective had been waived by the parties. The Court held that no reasonable business man would have felt, as at 25 August 2005, that there was no contract in place between the parties.

Comment

As Lord Clarke noted, the different decisions in the courts below and the arguments raised in the Supreme Court demonstrate the perils of beginning work without agreeing the precise basis upon which it is to be done:

> *"The moral of the story to is to agree first and to start work later."*

This is not always possible in reality. What construction professionals should do, where a contract has not yet been concluded, is to maintain and circulate clear schedules of where contract negotiations are up to, what remains to be agreed and whose responsibility each action point is to resolve. There should then be less room for confusion at a later date as to what has, and has not, been agreed, less chance of failing to conclude the contract and, as a result, a reduced chance of the parties having to spend significant legal fees in determining whether there is a contract and, if there is, what its terms might be.

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