



LEGAL BRIEFING

REINWOOD LTD v L BROWN & SONS LTD

Lord Hope of Craighead, Lord Scott of Foscote, Lord Walker of Gestingthorpe, Lord Brown of Eaton-under-Heywood, Lord Neuberger of Abbotsbury
[2008] UKHL 112, House of Lords

The Facts

This was an appeal to the House of Lords by a contractor, L Brown & Sons (“Brown”) against a Court of Appeal decision which had held that Brown had not been entitled to determine a contract (JCT Standard Form 1998 edition) between it and the respondent employer, Reinwood Limited (“Reinwood”), on the basis that Reinwood had unfairly withheld a sum which was due under the contract. The contract provided for a specified completion date as well as provisions for extensions of time (“EOT”), damages for non-completion and the right of the contractor to determine the contract on certain specified defaults by Reinwood.

Brown applied for an EOT in December 2005. The architect issued a certificate of non-completion and an interim certificate for payment in which the final date for payment was 26 January 2006. On 17 January, Reinwood issued a withholding notice based on the LADs resulting from the issue of the Certificate of Non-Completion and paid the remainder of the certificate on 20 January.

On 23 January the architect issued an EOT. The following day Brown ordered Reinwood to pay the outstanding balance of the payment certificate by the final date for payment. Reinwood did not pay by the due date and citing this as a specified default under the contract, Brown determined its employment. Brown submitted that Reinwood was entitled to rely on the Certificate of Non-Completion at the time it served the Withholding Notice. However, Reinwood had lost that entitlement by the final date for payment since it could no longer rely on the Certificate of Non-Completion as a basis for withholding payment from Brown.

The Court of Appeal held that Reinwood’s right to LADs crystallized at the time of the Withholding Notice, thus upholding its right to levy LADs. The effect of the EOT meant that the balance of the damages properly due to Brown should be paid in a reasonable time though not by the final date for payment. This Court of Appeal decision was reported in a previous Briefing. (See report 4 of 2008, 1 February 2008)

The Issue

What was the effect of the grant of an EOT after the date of issue of the interim certificate but before the final date for payment on the withholding notice issued by Reinwood?

The Decision

The House of Lords dismissed the appeal. Reinwood as employer, was entitled to deduct LADs specified in the Notice of Non-Completion from the amount stated to be due in the Interim Certificate. The withholding notice was effective when it was given because the architect had not yet issued a certificate fixing a new completion date. The EOT granted by the architect on 23 January could not retrospectively alter the fact that the employer had, on

20 January, paid the sum then properly payable by it. But an employer in this situation is obliged to pay or repay any LADs that were recovered, allowed or paid after he has been informed by the architect of the fixing of a new completion date. This must be done within a reasonable time after receipt of that information.

If the EOT had been granted before 11 January, Reinwood would not have been entitled to deduct the LADs. Although not spelt out, it follows that, where the necessary preconditions are satisfied and an employer has served a withholding notice, both parties are entitled to proceed on the basis that payment will, and can properly, be made in accordance with that notice. This was reinforced by the fact that the notices required by sections 110 and 111 of the Housing Grants, Construction and Regeneration Act and part of the purpose of those sections is to enable parties to a construction contract to know where they stand: *Melville Dundas*.

Comment

The House of Lords were influenced by the purpose of the Housing Grants, Construction and Regeneration Act 1996 i.e. that the parties to a construction contract are to know where they stand. The purpose of section 111 was to enable a contractor to know immediately and with clarity why a payment is being withheld. Provided an effective withholding notice has been given, the employer is entitled to rely upon it when making payment by the final date.

Charlene Linneman
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