



LEGAL BRIEFING

Diamond Build Ltd v Clapham Park Homes Ltd [2008] EWHC 1439 (TCC), Mr Justice Akenhead

The Facts

The Defendant wished to have refurbishment and regeneration works carried out to a number of houses and flats on the Clapham Park Estate. The Claimant tendered for these works and a Letter of Intent (“LOI”) was sent to the Claimant in June 2007 recording the Defendant’s intention to enter into a contract with the Claimant on the basis of the JCT Intermediate Form of Building Contract, 2005 edition with further amendments (“the JCT IFC”).

A formal contract was sent to the Claimant in October 2007 but the Claimant never returned the signed and executed contract.

The relationship between the parties deteriorated. The Defendant terminated the contract which it believed was governed by the LOI. The Claimant argued that the termination of the contract was inaccurate and misleading and that it could not limit the Defendant’s liability as provided for in the LOI because the contract between the parties was governed by the JCT IFC. Therefore, in order to terminate the contract, the Defendant was required to follow the JCT rules. The Claimant said that the parties proceeded on the basis that the LOI had been abandoned and that a JCT contract was governing their relationship.

The Issue

The case resolved around whether the LOI had been superseded by a contract incorporating the JCT IFC.

The Decision

Mr Justice Akenhead held that the LOI gave rise to a relatively simple form of contract. Although it was a simple contract arrangement, it had sufficient certainty including a commencement date, a completion date and an overall contract sum.

However, when considering how the LOI agreement worked, the court held that once the LOI was accepted, the only essential matter which remained to be done was the execution of the formal contract. Therefore, the only purpose of the LOI was to cover and legislate for the period between the LOI and the execution of the formal contract. It was, in effect, for the parties to decide when and how a contract is to come into being. By accepting the LOI, the parties were accepting that the terms of that letter should dictate the rights and obligations of the parties until the formal contract was signed.

The Claimant argued that either by way of representation or by way of convention the parties proceeded on the basis that the LOI had been abandoned and as if the full JCT IFC contract was regulating the relationship between the parties. It was held that estoppel of whatever type does not arise because the constant references in the action lists attached to the circulated meeting minutes demonstrate that the parties were still expecting the formal contract to be executed. Furthermore, it was never said by either party that the LOI was abandoned and the fact that the valuations were done on the basis of the tender rates and prices was not inconsistent with the LOI. The fact that

instructions were issued by the contract administrator was not inconsistent with the parties' belief that sooner or later a formal contract would be executed. Therefore the claim was dismissed.

Comment

This case illustrates the dangers posed by LOI which are not followed up promptly by the parties' processing of the formal contract anticipated by them at the LOI stage.

It is necessary in all cases of LOI to construe the letter to see whether it falls within one of several categories. There can be LOI which do not give rise to a contract at all. There are others which do give rise to a simple contract in themselves and are applicable pending the execution of a formal contract. There are others which are a contract so far as they go, but not subject to the entering into of a formal contract.

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