



LEGAL BRIEFING

ALLEN WILSON JOINERY LTD V PRIVETGRANGE CONSTRUCTION LTD

[2008] EWHC 2802, TCC, Mr Justice Akenhead

The Facts

The claimant applied for summary judgment to enforce an adjudicator's decision whereby the defendant was ordered to pay £12,449.70, plus VAT and interest.

The claimant was a sub-contractor employed by the defendant to manufacture, deliver and install three full flights of stairs from a basement to the second floor of a development project known as Silverwood.

The defendant sent plans and a section detail to the claimant, illustrating where the staircase would go in the development, although they did not identify the precise dimensions or go into any great detail. The claimant emailed the defendant a budgeted quotation for the staircase. The email also stated that the final costs would be finalised when full details had been agreed and a site survey carried out.

The claimant completed the site survey over the subsequent months and the defendant sent dimensioned and isometric drawings for the stairs. The claimant began the work but the staircase was later claimed to be unacceptable.

The claimant presented its invoice but it was unpaid. The claimant commenced adjudication proceedings but the defendant challenged jurisdiction on the grounds that whilst there was a contract between the parties, it was not in writing for the purposes of section 107 of the Housing Grants, Construction and Regeneration Act 1996 ("the Act"). The defendant also challenged the adjudicator's jurisdiction to award interest.

Although the adjudicator made an award in favour of the claimant, the defendant did not honour that decision. The claimant therefore applied to enforce the adjudicator's decision.

The Issues

- (i) was the contract between the parties in or evidenced in writing for the purposes of the Act?
- (ii) were any matters said to have been orally agreed trivial or immaterial and?
- (iii) did the adjudicator have jurisdiction to award interest?

The Decision

For there to be a construction contract in writing for the purposes of the Act, all the terms of the contract must be in writing and recorded in one of the ways set out in section 107. Mr Justice Akenhead was of the opinion that whilst adjudicators (and judges) should be robust in determining whether trivial matters said to have been agreed only orally between the parties can prevent what would otherwise be a written contract, the exercise of determining what is trivial must be an objective one in relation to the particular contract and

parties concerned.

It is always necessary to determine whether a so-called agreement made orally was in reality expected or intended to be binding as between the parties. The issue of whether an implied term existed did not impact upon the question of whether or not the contract between the parties was a written one for the purposes of section 107.

However, there were straight issues of fact and the court was not in a position to resolve such issues and therefore it was clear that there was a triable issue on some aspects concerning the terms said to have been orally agreed. Summary enforcement of the adjudicator's decision was therefore refused.

Mr Justice Akenhead was satisfied that the adjudicator did not have jurisdiction to award interest. There was no agreed or accepted term of the contract which permitted or required the imposition of interest for late payment and the parties had not accepted or agreed that the adjudicator should have jurisdiction.

Commentary

This case emphasises the importance of ensuring that all of the express terms of the agreement are recorded in writing. It is not sufficient to show that all terms material to the issues under adjudication have been recorded in writing. On the construction of section 107, what has to be evidenced in writing, is literally the agreement, which means a complete agreement and not a partial one.

Birgit Blacklaws
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