Legal Briefing

Lorraine Lee v Chartered Properties (Building) Ltd

[2010] EWHC 1540 TCC, Mr Justice Akenhead

The Facts

Ms Lee engaged Chartered to carry out refurbishment works on her property. The Contract was in the Standard JCT Minor Works Building Contract Form (2005). The adjudication clause in the Contract provided that if a dispute or difference arose and a party wished to refer it to adjudication, the Statutory Scheme for Construction Contracts (the "Scheme") would apply and that the RIBA would be the nominating body for the appointment of an adjudicator.

Ms Lee disputed the final account and instructed the architect to discuss this with Chartered. In an email exchange with the architect, each party agreed not to pursue their respective claims if the other party confirmed the settlement by way of formal exchange of letters to be submitted to the architect. The parties did not exchange letters. Chartered referred the dispute over the final account to adjudication and obtained an adjudicator's decision that Ms Lee was to pay Chartered the sum of £79,929.30. Ms Lee issued these proceedings under CPR Part 24 disputing the validity of the adjudicator's decision. Chartered counterclaimed for the summary enforcement of the adjudicator's decision.

The Issues

Ms Lee made a number of challenges to the validity of the adjudicator's decision, the most relevant being:

(i) whether a settlement of the various claims and cross claims was achieved prior to the adjudication reference,

(ii) whether the adjudicator was properly appointed; and

(iii) whether the adjudicator produced his decision within the requisite time period.

The Decision

Mr Justice Akenhead held that the arguments and evidence raised by the parties pointed strongly to there being a triable issue as to whether the parties had settled their respective claims. This issue was not suitable for summary judgment and would have to be determined at a full hearing. Although the emails to the architect envisaged the exchange of letters from each party agreeing to forgo their respective claims, it was possible that the factual background to the email exchange would confirm a binding full and final settlement of all claims and cross claims, with a contractually enforceable requirement to formally confirm that by letter to the architect.

In relation to the second issue, the Judge held that there was a triable issue as to whether Chartered had lodged its request to the RIBA for nomination of an adjudicator before it sent the notice of adjudication to Ms Lee. If Chartered had done so, this would have been in breach of Paragraph 2 of Part I of the Scheme, meaning the adjudicator was not properly appointed.

The most interesting issue in the case arose from Ms Lee's contention that the adjudicator's decision was issued out of time. The Judge made the following observations in relation to the Paragraph 19 of the Scheme:

"(a) The Scheme requires the Adjudicator to "reach his decision" within 28 days of the Referral or within 42 days if the referring party so consents; it is of course open to both parties to agree on any period longer than 28 days.

(b) The Scheme differentiates between the reaching of the decision (Paragraph 19(1) and (2)) and the delivery to the parties of a copy of that decision (Paragraph 19(3)) …

(c) No particular form of delivery is specified; therefore, the decision can be delivered by hand, by fax, email and when time allows by post.

(d) Paragraph 19(2) expressly legislates for what may happen where the adjudicator fails for any reason to reach his decision within the time constraints laid down."

The adjudicator had emailed the parties on 12 November 2009 stating that he would reach his decision the following day in accordance with the timetable, but asking if the parties had any objection to the decision being delivered the following Monday. Chartered agreed to the adjudicator taking time to have the decision typed and proof-read; Ms Lee did not acknowledge the adjudicator's email. The adjudicator then emailed the parties at 2.48 pm on Friday, 13 November 2009, confirming that he had reached his decision and that it would be delivered on Monday.

The Scheme requires an adjudicator to deliver a copy of the decision as soon as possible after reaching it. In the circumstances of this case, with a delay of 74 hours, it could not be said that the adjudicator delivered a copy of the decision "as soon as possible after" he reached it and therefore the decision was unenforceable.

Comment

An adjudicator must be very careful to deliver his decision as soon as possible after reaching it. This Judgment shows that delaying delivery of the decision for a weekend and most of the following working day in order to have it typed and proof-read will fall foul of this requirement. An adjudicator must obtain the agreement of the parties to do so, or provide very persuasive reasons as to why the decision could not be delivered close to the time that it was reached. Parties to adjudication should also be wary of this; if the parties' agreement to such delay is not obtained, the decision may be unenforceable, disputes are likely to arise over adjudicator's costs and the whole adjudication process will inevitably be delayed.

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