



LEGAL BRIEFING

Harris Calnan Construction Co Ltd v Ridgewood (Kensington) Ltd

TCC, HHJ Coulson QC [2007] EWHC 2738

The Facts

The claimant applied for summary judgment arising out of an adjudication decision and claimed for costs on an indemnity basis. In the course of the adjudication the adjudicator rejected the defendant's challenge to his jurisdiction, finding that there was a contract in writing between the parties.

The defendant challenged the enforcement proceedings on three grounds. First, the adjudicator did not have the necessary jurisdiction to decide the dispute because there was no contract in writing. Secondly, because the defendant was a company based in Jersey, the service claim form was invalid. Although the defendant had received the claim form, the claimant had not obtained permission from the court to serve the claim outside of jurisdiction. The defendant's final challenge was that the claim form did not include a statement of the ground on which the claimant was entitled to serve it out of the jurisdiction.

The Issues

There were three issues before Judge Coulson. The first issue to be decided by the Court was whether or not there was a contract in writing. In order to answer this question the Court was to examine whether or not, when the jurisdiction point was raised in front of the adjudicator, the parties agreed to be bound by his conclusions. The second issue was whether or not the service of claim form was invalid because the claimant had not obtained permission from the court. Finally, what was the effect of the claimant's omission to include a statement of the grounds on which the claimant was entitled to serve the defendant outside jurisdiction?

The Decision

A party who has a jurisdictional challenge in adjudication has a clear choice. He can agree that the adjudicator should decide the question of jurisdiction and be bound by that result. Alternatively, he can reserve his right to argue that, whatever the adjudicator decides, the adjudicator did not have jurisdiction to reach that conclusion.

In this case, there was no suggestion that the defendant ever reserved its position. It was clear that the defendant argued that the adjudicator did not have jurisdiction and put their submissions in writing, but they did not reserve their position. They appeared therefore to be content to be bound by the adjudicator's decision on jurisdiction. The decision that the adjudicator reached as to the existence of the contract could not now be challenged by the defendant.

Judge Coulson held that even if he was wrong on that argument, there was a contract in writing. The contractual letter in question was in the form of a letter of intent. The letter of intent in the present case, made it plain that there was complete agreement as to the parties to the contract, the contract

work scope, as to the agreed lump sum, an agreed set of contract terms, retention, liquidated damages and the contract period. There was nothing left for the parties to agree.

In relation to the second issue, CPR 6.19(1)(b) provides that the permission of the court for service outside the jurisdiction is not required where the claim is one which the courts have the power to determine under the Judgments Regulations and the defendant is a party to an agreement conferring jurisdiction to which Article 23 of the Judgments Regulations refers.

The claimant was domiciled in the UK. The remaining point for the court to determine was whether the parties had agreed, in writing or evidenced in writing, that the court had jurisdiction to settle any disputes which may arise between them. The JCT 2005 Form was incorporated into this contract. Article 9 of the Form makes it clear that the court shall have jurisdiction over any dispute or difference between the parties which arises out of, or in connection with, that contract. Therefore the claimant did not require the court's permission to serve the claim form outside of jurisdiction.

While the claim form did not include a statement of the ground on which the claimant was entitled to serve the defendant out of the jurisdiction, it was at most an irregularity and there was no question of any prejudice being suffered by the defendant as a result of the alleged failure.

The various potential defences failed and the adjudicator's decision was summarily enforced.

Comment

It is not uncommon for a defendant to fail to pay on the adjudicator's decision, thereby obliging the claimant to issue enforcement proceedings. It is also not uncommon for the defendant to refuse to co-operate such that the claimant has to go to the expense of pursuing enforcement proceedings through to this sort of summary judgment hearing. In this case the defendant knew or ought to have known that it had no defence to the claim to enforce the decision and it was unreasonable for the defendant to continue to give the impression that the application was resisted and therefore causing the claimant to incur costs.

Judge Coulson made it clear that the defendant had no substantive basis for challenging the decision. The court will not encourage parties, who have no defence to a claim on an adjudicator's decision, to use up valuable court time and resources of the successful party in running unmeritorious points that are doomed to fail. Furthermore, parties that choose to do so risk having indemnity costs awarded against them.

***Birgit Blacklaws
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