



LEGAL BRIEFING

Furmans Electrical Contractors v Elecref Ltd

[2009] EWCA Civ 170, Court of Appeal. Waller LJ, Arden LJ, Moore-Bick LJ

The Facts

Elecref Ltd (“Elecref”) subcontracted electrical cable installation works to Furmans Electrical Contractors (“Furmans”). Elecref were themselves subcontractors. Originally Furmans was remunerated on a meterage installed basis on the basis of a nine-hour day. From July 2004, Furmans was employed on a daily rate for some jobs. It was originally agreed that the daily rates would be £650 for four men for the day, and £700 if the site was far away, to include accommodation. The daily rate did not mention the number of hours on which it was based.

Furmans charged the daily rate based on its figure of a nine hour day for four men. Elecref’s men were working an eleven hour day. Furmans charged only half the daily rate if they worked only half a day.

For some period of time, invoices were sent charging the daily rates or the half day rate and charging for the Friday with accommodation. Elecref’s site supervisors confirmed and checked the invoices prior to payment. Most of the invoices were paid.

In September 2007, a number of Furmans’ invoices were outstanding. Furmans then wished to increase its daily rate. Elecref responded by stating that Furmans were overcharging. Elecref counterclaimed for approximately £40,000 on the basis that Furmans should have worked an 11 hour day.

The trial judge held that Furmans’ invoices should be calculated on a quantum meruit basis and that £650 was reasonable for an 11 hour day (but not a 9 hour day). The trial judge reordered repayment of sums already paid to Furmans.

Furmans appealed.

The Issues

- (i) What was Furmans entitled to claim i.e. a reasonable sum or to retain monies paid previously under the invoices?
- (ii) Was there an agreement that the daily rate was for a certain number of hours?

The Decision

As full details of the alleged contract had not been pleaded, Furmans was entitled to a reasonable sum for its services and materials. This was not a quantum meruit claim. The number of hours had not been agreed through a course of conduct. Therefore there was a contract, or a series of contracts under which Furmans agreed to supply services and materials for Elecref at a daily rate, assessed on the basis of a reasonable number of hours.

Furmans had put in invoices claiming daily rates which were not contrary to any agreement or representation. These invoices were paid, after being checked by Elecref’s site supervisors, over a substantial period of time - whether Furmans was working a 9 or 11 hour day was something that Elecref was in a position to check. However, after voicing doubts about whether it was being overcharged, Elecref then paid a substantial amount and did not make any claim for the return of money.

By making a substantial payment after knowing of its complaint, even if there had been some mistake or misrepresentation, Elecref waived its rights. Therefore Elecref could not reopen the invoices already paid.

In relation to the unpaid invoices, Furmans were entitled to a reasonable sum and monies were deducted from the invoices rendered by the court.

Comment

This case serves as an example of the need for parties to ensure that all terms of a contract are clear. Here the reference to “daily rate” did not refer to how many hours Furmans used to calculate the rate. However, as Elecref made a substantial payment after raising its initial complaint it was not now entitled to object to the paid invoices.

Charlene Linneman
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