



LEGAL BRIEFING

A standard position

Reinwood Ltd v L Brown & Sons Ltd (2007)

Court of Appeal, Mummery, Arden and Dyson LJJ [2007] EWCA Civ 601

The Facts

Reinwood Ltd appealed the Court's finding that L Brown & Sons Ltd had validly determined its employment under the contract on the grounds that Reinwood had continued to fail to pay the amount properly due under an interim certificate by the final date for payment.

Reinwood and Brown entered into a contract for the construction of 59 apartments in Manchester. The form of the contract was the JCT Standard Form of Contract, 1998 Edition, with Quantities incorporating Amendments 1 of 1999, 2 of 2000 and 3 of 2001.

The project suffered a number of delays. Brown applied for an extension of time. The architect issued a certificate for non-completion under clause 24.1 of the contract and then issued an interim certificate for payment.

Reinwood issued a notice under clause 24.2 that they intended to deduct monies from the interim certificate for liquidated and ascertained damages for non-completion. It issued a second notice confirming this intention in accordance with clause 30.1.1.3.

The architect granted an extension of time.

Reinwood did not make any further payment and Brown purported to serve a notice of default. Some time later Reinwood failed to make payment pursuant to another certificate. Brown served a notice of determination relying on the previous notice of default. Reinwood claimed that Brown had unlawfully terminated the contract and was in repudiatory breach because the previous notice of default had been wrongly given.

The Issue

The issue was whether an employer under a JCT building contract was entitled to deduct the amount of damages specified in the notice of intention where the certificate of non-completion was cancelled by a subsequent grant of an extension of time.

The Decision

Where the conditions for giving a notice of intention to deduct were satisfied, the right to deduct the amount of liquidated and ascertained damages specified crystallised on the giving of the notice. The contract makes express provision for a certificate of non-completion to be cancelled upon the fixing of a later date for completion. However, Lord Justice Dyson thought that it was significant that there was no similar provision for the cancellation of a notice to deduct where a certificate for completion has been cancelled. Although a notice cannot be given unless a certificate for non-completion has been issued by the architect, its continuing efficacy does not depend on the continuing existence of the certificate and therefore does not cease to be effective when

a certificate of non-completion is cancelled by a subsequent extension of time.

It followed that Reinwood had paid the amount properly payable in respect of the interim certificate and Brown had not been entitled to give notice of default.

In conclusion, Dyson LJ allowed the appeal. Both Mummery LJ and Arden LJ agreed.

Comment

This appeal raises a point of construction on a standard JCT Form of Contract on which it appears there is no previous authority. The case clarifies the position of the relationship between damages for non-completion, extension of time and certificates for payment. Of key importance is the fact that the withholding notice was valid when it was issued and remained valid even though the certificate of non-completion was cancelled. It is clear from the judgment that the Judge was of the view that the machinery provided by this contract is clear and produces a workable commercial scheme.

Birgit Blacklaws
July 2007