



LEGAL BRIEFING

Ringway Infrastructure Services Limited v Vauxhall Motors Limited

TCC, Mr Justice Akenhead [2007] EWHC 2421

The Facts

The claimant applied for summary judgment to enforce a decision of an adjudicator. The contract between the parties was or incorporated the JCT Standard Form of Building Contract with Contractor's Design 1998 Edition, incorporating amendments 1-5. The claimant was employed to construct a new vehicle distribution centre to carry out various associated works. It was accepted that the contract between the parties was a construction contract to which the provisions of the Housing Grants Construction & Regeneration Act 1996 applied.

The claimant made 10 applications for interim payment. The claimant then submitted a draft final account identifying a total contract valuation substantially in excess of the original contract value. After a year's correspondence, the claimant submitted interim application No. 11 claiming a net sum of £1,303,704.95 and giving detailed explanations as to why and on what basis it was entitled to sums over and above the original contract price. The defendant responded some six weeks later stating that it had not had sufficient time to consider in detail the build up of variation costs. The defendant did not issue a payment notice.

The parties agreed to refer to an adjudicator the dispute which had arisen out of interim application no. 11. The adjudicator held that the interim application was a valid application under clause 30.3.1 of the contract and that the defendant had not responded with its own notice within seven days.

One of the jurisdictional challenges to the enforcement proceeding was that the adjudication notice referred to the ultimate entitlement under its final account as opposed to the amount due under the interim application. The defendant also alleged that the dispute had not crystallised prior to the reference to adjudication because no demand had been made for payment.

The Issue

The essential overall issue before the court was whether or not the adjudicator had jurisdiction to decide that given the absence of any timely clause 30.3.3 and/or 30.3.4 notices, the claimant was entitled to the net sum claimed in its interim application no. 11.

The Decision

Mr Justice Akenhead considered it impossible to construe interim application no. 11 as anything other than a claim for payment of money. It could not be construed either on its face or in context as a request for consideration of the various claims for variations and other matters on some academic or pure valuation basis. This application was a commercial document by which payment was sought. It did not matter that practical completion might have occurred before it was issued. If the defendant believed that the net sum in the application for payment was overstated, the contractual machinery

enabled it to say so in a notice under clause 30.3.3.

There was no express or implied agreement between the parties that the interim application was in some way to be treated as not an application for payment under the contract but as some invitation to treat or negotiate.

Before reference to adjudication, a dispute had crystallised as to the proper sum due to the claimant under interim application No. 11. The application had been made under clause 30.3 and it was open to the claimant to rely on all of the provisions of that sub-clause to justify its entitlement to payment.

Comment

This case is a timely reminder to employers to ensure that they are familiar with the withholding provisions of their contracts. Under clause 30.3.3 of the contract, the employer is required to give written notice specifying the amount of payment proposed to be made in respect of that application not later than 7 days after the receipt of an application for payment. The effect of clause 30.3.5 is simple, where the employer has failed to give the requisite written notice under clause 30.3.3, the employer must pay the contractor the amount stated in the application.

***Birgit Blacklaws
January 2008***
