



LEGAL BRIEFING

As clear as mud

Weetwood Services Ltd v Ansvar Holdings Ltd

Court of Appeal, Waller LJ, Sedley LJ, Moses LJ, [2007] EWCA Civ 736

The Facts

This was an appeal from HHJ Armitage's judgment awarding the fees claimed by Weetwood Services Ltd ("Weetwood") in the sum of £7,092.68. Ansvar Holdings Ltd ("Ansvar") sought planning permission to extend a building they owned for the storage of motor vehicles. A water course traversed this land and entered into a culvert. This culvert was present on the land before Ansvar purchased the land.

The Environmental Agency served an abatement notice on Ansvar requiring the removal of the culvert and reinstatement of an open channel. Ansvar consulted Weetwood Services to show if the culvert worked and would not flood. The parties met on site on 9 November 2001 and by letter dated 9 November, Weetwood Services set out the contract and the terms of the contract between Weetwood and Ansvar. A term of the contract was that Weetwood would "[r]un the two [computer flooding] models for the various return periods and report on the results, including identifying the route that any overland flows would take and the impact of these on existing and proposed buildings".

The Issues

What was the limit of Weetwood's obligations under the contract? Did the contract require Weetwood to undertake to run the software program, calculate whether the culvert would flood in any circumstances, and then calculate whether the open stream, if the culvert was replaced, would flood and produce the results of running these two models? Or was there an obligation to go further and effectively provide all the calculations and the computerised figures that would support the conclusion that Weetwood had reached?

The Decision

The purpose of what Weetwood was being asked to report on was to assess the potential for flooding. That was what the 9 November letter said. What was needed were results from which a comparison could be made so far as flooding was concerned between having a culvert and having the culvert removed. That is, there was no express obligation to provide the calculations. There was no need to imply a term that Weetwood had to provide Ansvar with their calculations as this term was not necessary for business efficacy.

Comment

This is a case that demonstrates the importance of setting out clearly the required terms of a contract. In this case Ansvar required calculations but this term was not inserted into the contract. Therefore there was no basis for Ansvar insisting on the production of all calculations to support Weetwood's conclusions.

Charlene Linneman
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