



LEGAL BRIEFING

Sunshine Ventures Ltd & Rashmith Thakar v Hussein Kurdieh

[2009] EWHC 2866 (QB), Judge Richard Seymour QC

The Facts

Sunshine Ventures owned a nursing home and one of its directors, Rashmith Thakar owned a flat. Both parties engaged Kurdieh to carry out work to the nursing home and the flat. There was very limited documentation. Disputes arose regarding delay and completion of the work as well as the making of interim payments to Kurdieh. Thakar demanded that outstanding work be completed as a matter of urgency. Two months later, the work to both the nursing home and flat was terminated by the claimants. At that time, the work had not yet been completed.

The Issue

Were the claimants entitled to terminate the contract on the basis of its demand that the work be completed urgently? In other words, had the claimants made "time of the essence" such that could terminate the contract.

The Decision

Judge Seymour QC held that the claimants' notice was not sufficient to make time of the essence. The claimants should have provided a clearer indication of what was supposed to be completed and by when. The notice also had to state that if it was not complied with then the claimants would treat the contract as coming to an end. Further, they had to specify a reasonable time for compliance.

As the notice was invalid, the claimants had wrongfully repudiated the contract. The claimants were therefore in breach of contract.

In addition, the Judge stated that an employer under a building contract could not complain that some parts of the work were defective before completion of all of the works. The contractor had to be given an opportunity correct or complete work, at least until the stage where all of the works was substantially completed. It was also well known that minor disconformities were remedied during the final stages of a project under the heading "snagging".

Comment

It is not unusual for owners to become frustrated once a project has been delayed and for them to demand that the project is completed. It is, however, very dangerous to terminate the contract simply because the contractor has not yet finished.

If there is a written contract which sets out the termination provisions then those must be closely followed. In the absence of clear provisions, it is possible to serve a notice demanding that the work is completed, but that notice must identify the work which is outstanding, allow a reasonable time for completion of that work and make it clear that the contract will be terminated if the works are not concluded. In this case, none of that was done and the owner found themselves being in default rather than the contractor.