



LEGAL BRIEFING

Edenbooth Limited v Cre8 Developments Limited [2008] EWHC 570 (TCC)

Mr Justice Coulson, [2008] EWHC 570 (TCC)

The Facts

The Claimant applied for summary judgment to enforce an adjudicator's decision. The Defendant was a development company who had engaged the Claimant to carry out ground works at two adjacent properties. One of the properties was owned and occupied by a director of the Defendant.

The work was carried out. The Claimant contended that it was owed further sums and commenced adjudication proceedings. The adjudicator concluded that an additional sum of £14,126.91 was due. The Defendant did not pay the sum awarded and enforcement proceedings commenced.

The Issues

The Defendant challenged the enforcement on three grounds

- (i) that the works carried out by the Claimant was not a "construction operation" within the meaning of section 105 of the Housing Grants, Construction Regeneration Act 1996 ("the Act");
- (ii) that it was a residential occupier in accordance with section 106 of the Act and therefore the contract was exempt; and
- (iii) that the adjudicator acted unfairly.

The Decision

It was held that the proper procedure for the court to adopt is first to look at any points that have been taken as to the adjudicator's jurisdiction. If the adjudicator did not have jurisdiction then the decision is a nullity. If the adjudicator did have the necessary jurisdiction, then the court should go on to consider, if it is raised, any question that the adjudicator acted unfairly.

In Mr Justice Coulson's opinion, the argument that ground and drainage works is not a "construction operation" under section 105(1)(a) of the Act was impossible to sustain. The exemption to this rule relates to offsite manufacture or delivery of building components or plant and is therefore irrelevant.

The Judge also considered that the difficulties with the claim that the Defendant was or should be a residential occupier were overwhelming. It was difficult to imagine how a company could ever be a residential occupier. The term "residential occupier" seems to convey a requirement that a real person must be living in the house or flat in question. Secondly, the work was being carried out by a development company which would negate the suggestion that the work was being carried out by or on behalf of a residential occupier. Therefore, it was held that the adjudicator had the necessary jurisdiction to reach the decision that he did.

The Defendant claimed unfairness on the basis that it was obliged to put in

submissions within a short period of time, when he had not been able to take advice from all those from whom he wished to seek assistance. The Defendant also claimed that there were communication problems during the adjudication which meant that it did not receive the relevant documentation. Mr Justice Coulson noted that there were communication problems throughout the adjudication but that at least some of those were self-inflicted by the Defendant. It was held that not only did the adjudicator have the necessary jurisdiction; there was no question of unfairness or any breach of the rules of natural justice.

Comments

Mr Justice Coulson provides some useful commentary about the question of speed with which parties are obliged to produce information. He notes that it is a complaint often heard in enforcement applications. However, what must be remembered is that an inherent feature of adjudication is that the adjudicator is obliged to produce his decision quickly. Adjudication does not work if the parties take too long to provide information to the Adjudicator.

Furthermore, it should be noted as a warning not only to unrepresented parties, but all parties to a construction dispute that judges are particularly unimpressed by parties' non-compliance with the timetable and orders of the court.

***Birgit Blacklaws
April 2008***
