



LEGAL BRIEFING

Westwood Structural Services Ltd v Blyth Wood Park Management Company Ltd [2008] EWHC 3138, TCC

The Facts

This case relates to an application by the claimant to enforce an adjudicator's first decision for the total sum of £49,583.31. The application was opposed by the defendant, who raised an issue as to the claimant's entitlement to be paid any further sums following the defendant's determination of the claimant's employment under the contract.

Pursuant to a contract dated May 2006, the defendant employed the claimant to carry out works at Blyth Wood Park, Blyth Road, Bromley in Kent. The contract incorporated the JCT Minor Works Form, 1998 Edition.

The claimant contended that the works under the contract were practically complete on 15 January 2008 and relied on a letter from the contract administrator of that date as evidence. Two days later, the contract administrator notified the claimant that there were concerns regarding the efficacy of the claimant's works and that an investigation was underway. The contract administrator also told the claimant not to carry out any further work. The claimant alleged that this letter amounted to a repudiation of the contract and thereafter left the site.

The claimant commenced adjudication proceedings seeking declarations that practical completion had been achieved and that the letter received from the contract administrator was a repudiatory breach of contract.

Following the commencement of adjudication proceedings, the defendant sent to the claimant a letter purporting to determine the claimant's employment under the contract. The defendant then sought to defend the claim in the adjudication by reference to clause 7.2.3 of the contract, on the basis that no further sum was due until completion of what, by then, were called remedial works. However, the adjudicator properly decided that since the determination had occurred after the commencement of the adjudication, he did not have jurisdiction to address it.

The defendant commenced a second adjudication in front of the same adjudicator to deal with its determination claim and the argument pursuant to clause 7.2.3. Amongst other things, the defendant sought a decision that it was under no obligation to make any further payment to the claimant unless and until the works had been completed by an alternative contractor. The adjudicator found that the defendant had validly determined the claimant's employment however clause 7.2.3 did not bite when the payment in question arose out of an adjudicator's decision. He also determined that the expression "further payment" in clause 7.2.3 meant future payment, and did not apply to any payment that became due before the determination.

Notwithstanding the results of both decisions, the defendant failed to pay the sums due and accordingly the claimant sought to recover those sums.

The Issue

The main issue before Mr Justice Coulson was whether or not an employer was

entitled to defeat a claim for sums due under the contract by reference to an event which occurred after the money should have been paid.

The Decision

The court held that it will enforce an adjudicator's decision unless it is plain that the question which he has decided was not the question referred to him or the manner in which he has gone about his task is obviously unfair. Mr Justice Coulson said that it should be only in rare circumstances that the courts will interfere with the decision of an adjudicator.

It was clear that in the first decision, the adjudicator determined that a sum was due to be paid to the claimant. The adjudicator's determination of that issue may be right and it may be wrong, either in fact or in law, but that was his decision and the parties are bound by it.

As to the arguments arising in connection with clause 7.2.3, the court held that it cannot operate as a defence to the claim. In the court's opinion it would be contrary to the Standard Form of Contract, and indeed to the Housing Grants Construction and Regeneration Act 1996, to conclude that an employer was entitled to defeat a claim for sums due under the contract by reference to an event which occurred after the monies should have been paid. Therefore, the court concluded that the claimant was entitled to summary judgment in the sum of £48,583.31.

Comment

This case again reinforces the court's reluctance not to enforce an adjudicator's decisions. An area of fact or law will not invalidate an adjudicator's decision. If the adjudicator has answered the right question in the wrong way, his decision will nevertheless be binding. It is only if he has answered the wrong question that his decision will be a nullity.

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