



LEGAL BRIEFING

(1) T & T Fabrications Ltd and (2) T & T Fabrications (a firm) v Hubbard Architectural Metalwork Ltd

[2008] EWHC 7 (TCC)

The Facts

The claimants applied for summary judgment under Part 24 of the Civil Procedure Rules for immediate enforcement of an adjudicator's decision. There was a contract between the second claimant and Hubbard, the defendant. It related to atrium bridges, staircases and metalwork items for a development in London in 2003.

In September 2006, the assets and liabilities of T & T Fabrications were assigned to T & T Fabrications Limited. On 12 November, T & T Fabrications (the firm rather than the limited company) commenced adjudication. It was not possible for the firm to be the beneficiary of any decision made by the adjudicator because the rights and remedies had been assigned to the limited company.

The Issue

The main issue in this case related to whether there was a contract in writing for the purpose of the Housing Grants, Construction and Regeneration Act 1996. The contract was a simple one, and did not contain adjudication provisions. Nonetheless, it was a construction contract within the meaning of the Act and so the referring party in the adjudication argued that the Adjudication Scheme had been implied pursuant to the Act. The defendant argued that while there may be a contract, there was not a contract "in writing" within the meaning of section 107 of the Act.

The Decision

The defendant argued that two terms had not been recorded in writing. The first related to the provision of drawings, and the second related to the timing of the works. The claimants provided witness statements that denied these assertions.

HHJ Wilcox considered the evidence put forward by the witnesses. The evidence was conflicting, and in the Judge's view it was not possible to resolve quickly in a summary judgment application. A full hearing would be required. There was credible evidence to suggest that the two material terms might have been agreed, but they were certainly not reduced to writing. He therefore held that there was an arguable case as to the jurisdiction of the adjudicator as the contract may not have complied with Section 107.

He therefore refused to enforce the Judgment.

Interestingly, he also noted that the claim that had been referred to adjudication was for a small amount. It had also taken 3 to 4 years for the claim to be brought before an adjudicator. Even then it was unenforceable. The Judge stated that the costs of taking the matter to adjudication and then trying to enforce it were, in his view, "out of all proportion". He went on to

state that these final account matters could have been dealt with many years before while recollections of the witnesses were fresh, and that the matter should really have been dealt with in the County Court where issues about compliance of section 107 would have been irrelevant.

Comments

The Technology and Construction Court enforces adjudicators' decisions, whenever possible. However, there are a number of areas where cannot be enforced. A key one is where the construction contract has not been fully recorded in writing. It is possible for there to be a "contract which" is recognisable by the Courts, but for that contract not to be a contract in writing. This seemingly small distinction is quite important in the context of adjudication. If the contract is not one "in writing" then adjudication will not be implied into the contract, and so adjudication cannot be used.

In this case, the contract may have contained two important terms that were only discussed orally. The Judge therefore refused to enforce the decision of the adjudicator because it was not a contract in writing.

The Judge also interestingly noted that it would have been quicker and cheaper for the parties simply to have gone to the County Court where technical issues relating to section 107 of the Act would not have arisen.

Nicholas Gould
June 2008