



LEGAL BRIEFING

AE Yates Trenchless Solutions Ltd v Black & Veatch Ltd

[2008] EWHC 3183, TCC, Mr Justice Akenhead

The Facts

The court was required to determine preliminary issues as to what were the terms and conditions applicable to the sub-contract between Yates and Black & Veatch. Black & Veatch had taken over the original works from Gleeson Construction Services Limited (“Gleeson”) which was engaged by South West Water Limited in about 2005, to carry out engineering works at Burrows Water Treatment Works, Devon. Yates was a specialist engineering contractor which was engaged as a sub-contractor to carry out directional drilling work to install water mains.

No formal sub-contract was signed. Gleeson’s invitation to tender referred to the sub-contract being the IChemE Form of Contract for Civil Engineering Works. Yates’ tender provided that its conditions would form part of the contract. Yates then attended a pre-contract sub-contract meeting at Gleeson’s offices. A record of interview was filed at the meeting and signed by the parties as a true record. The form of contract was described as the IChemE Brown Book. Gleeson later sent Yates the sub-contract agreement for completion including the IChemE Form or Brown Book.

Yates encountered ground conditions which it claimed delayed and disrupted its work and for which it claimed to be entitled to compensation under the sub-contract terms.

The Issues

The main issue before the court was whether or not Yates’ terms and conditions, specifically a ground condition clause, had been incorporated into the contract and whether one set of terms and conditions had contractual priority over the other.

The Decision

Mr Justice Akenhead held that at the beginning of the pre-contract sub-contract meeting, Black & Veatch said that the form of the contract was to be the Brown Book and there was no dissent from that. Yates had signed the record of interview and therefore the burden of establishing that Yates made clear that its terms and conditions were to apply was on Yates. Yates had failed to discharge that burden.

At the close of the interview meeting, in contractual terms, Yates’ offer and its quotation had been rejected. There was no counter-offer or acceptance because the question of liquidated damages remained to be discussed. In effect, the contractor had indicated the basis on which it was prepared to contract and Yates was to seek confirmation or otherwise in relation to liquidated damages.

The sending of the sub-contract agreement could properly be classified in contractual terms as an offer. It was an offer to Yates that it should carry out the sub-contract works on the terms indicated in the documentation. That offer was accepted by the later conduct of Yates viewed objectively. Thus

there was, at this stage, a simple contract between the parties.

It was held that the sub-contract included Yates' quotation as well as the Brown Book. The Brown Book specifically provided for the General Conditions of Contract to take precedence over Yates' quotation if there was a conflict.

As a matter of business common sense, parties can be taken to have intended their contract to make sense and, where ambiguities arise in circumstances in which parties have made provision for there to be a precedence that precedence should apply.

Black & Veatch was entitled to declarations to the effect that the documents enclosed with its letter were incorporated in and formed the sub-contract between the parties and that the terms and conditions of the IChemE Form of Contract for Civil Engineering works take precedence over the terms and conditions in Yates' quotation where the two conflict.

Comments

English law generally adopts an objective theory of contract formation. That means that the yardstick is the reasonable expectations of sensible businessmen. Thus, in the context of a commercial contract, one needs to have regard to an objective interpretation of what the parties did and said in fact. Therefore, be aware, as a contractor who commences work after receipt of an order to commence may well have its conduct in commencing the work objectively construed as an acceptance of the order, because objectively sensible business people would expect that commencement without reservation suggested acceptance of the order.

Birgit Blacklaws
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