



LEGAL BRIEFING

Webb Resolutions Ltd v JV Ltd t/a Shepherd Chartered Surveyors [2013] EWHC 509 (TCC)

The Facts

Webb Resolutions Ltd ("Webb") an assignee of a centralised mortgage lender brought proceedings against a firm of surveyors JV Ltd ("JV") for three allegedly negligent property valuations on the basis of which Webb had advanced loans. As a result of the allegedly negligent valuations Webb had sustained loss.

The claim raised the following key issues:

- (i) the validity of the various assignments;
- (ii) whether or not the lender was negligent;
- (iii) whether the lender failed to take reasonable steps to mitigate its loss; and
- (iv) whether the individual valuations were made negligently.

A case management conference ("CMC") took place on 23 November 2012. At this CMC, Mr Justice Edwards-Stuart canvassed an approach to the litigation whereby issues relating to validity of the assignments and negligence in relation to the lending should be dealt with first, followed if necessary by issues in relation to the actual valuations. The objective of this approach was to ensure costs efficiency and proportionality. With some qualification, Webb and JV agreed with Mr Justice Edwards-Stuart's suggested approach.

As is usual procedure in the Technology and Construction Court ("TCC"), Webb's solicitors were requested to prepare a draft order reflecting the court's directions for agreement by JV's solicitors, and filing with the Court for the Judge's approval.

Webb's solicitors issued a draft order to JV's solicitors three days later which bore little resemblance to Mr Justice Edwards-Stuart's directions. Instead the draft order provided for disclosure, exchange of witness statements and expert evidence on all issues in the case. This was in contrast to the court's directions which provided for limited disclosure and the exchange of evidence for the assignment and lending issues only.

JV's solicitors responded on 10 December 2012 explaining that the draft order did not properly reflect the directions ordered by Mr Justice Edwards-Stuart and enclosed a draft order which JV believed accurately reflected what had in fact been agreed at the CMC.

On 21 December 2012, Webb's solicitors responded providing extensive amendments to the draft order. There were further exchanges of correspondence in early January 2103 whereby it was apparent that the parties were unable to agree on the terms of the draft order.

Webb's solicitors wrote to the court on 16 January 2013, stating that they were experiencing great difficulty in drafting the order in a way which would give effect to the court's wishes but which would avoid duplication of time and costs. JV's solicitors responded by letter dated 21 January 2013 addressing the court and enclosing its proposed draft order.

The court responded on 4 February 2013 stating that the order should be in the form proposed by JV and stated that whilst it was open to Webb to apply to vary the order, such an application would require compelling grounds.

Webb's solicitors maintained its refusal to consent to the order. It was only to avoid the costs of attending the next CMC on 8 March 2013 that consent was eventually given.

In any event, the CMC went ahead due to the court's concern regarding Webb's solicitors' refusal to agree the order until the last minute and the late lodging of the order. In response to Webb's solicitors eventual offer to agree the draft order, JV's solicitors had invited Webb to pay their costs "*incurred wholly as a result of you not agreeing to the order made by the court*". Webb's solicitors refused on the basis that the costs provision from the 23 November 2012 CMC provided that costs were reserved for the trial judge.

At the CMC on 8 March 2013, Mr Justice Edwards-Stuart ordered that the 23 November 2012 order be varied so that the costs incurred in agreeing the terms of the order would be excluded from the costs reserved to the trial judge. Mr Justice Edwards-Stuart indicated that he would deal with those costs.

The Issue

Whether Webb were responsible for costs which were unnecessarily incurred by its unreasonable conduct in attempting to agree the terms of the draft order.

The Decision

Mr Justice Edwards-Stuart found that JV were entitled to recover costs which were unnecessarily incurred by their solicitors and counsel in the protracted attempts to obtain agreement with Webb to an order in the form that had been directed by the court. JV claimed £8,609. This sum was reduced to take account of the fees that would have been incurred in any event to £6,925.

The Judge expressed the view that,

"If a party is charged with drawing up an order it is the duty of its solicitors and counsel to produce a draft that fairly reflects what they think the judge decided or directed. Save for the most complicated directions, this seldom presents any difficulty."

However, in the present case the Judge commented that Webb's solicitors had produced an order which failed to reflect what had been ordered by the court, and instead,

"produced an order that reflected the directions that they or their clients would like to have, and not the directions that the court in fact ordered. That is wholly unacceptable: it is not just unreasonable, it is verging on the contemptuous."

The Judge made clear that,

"...what occurred in this case must not happen again. Solicitors and counsel are to give effect to court orders; they are not to attempt to manipulate them to their own or their client's perceived advantage. I see no reason at all why the Defendants should have to pay the costs that were quite unnecessarily incurred as a result of the Claimants' manoeuvres."

Commentary

The circumstances of this case are exceptional. Generally, as noted by the Judge, the terms of an order are agreed upon between the parties without significant difficulty.

In this instance however Webb's solicitors appeared to have drafted an order based upon what their client wanted instead of what was actually directed by the Judge.

From a practical perspective, where parties are unable to agree on the directions ordered by the court guidance should be sought directly from the court which generally will resolve matters.