



LEGAL BRIEFING

Good intentions

Redworth Construction Limited v Brookdale Healthcare Limited

TCC, HHJ Havery QC, [2006] EWHC 1994

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The Facts

Brookdale employed Redworth under a contract for the erection of four group homes, a day care centre and associated works. The contract between the parties was made on 21 November 2003. The contract was formed from initial negotiations and discussions between the parties commencing in early 2003. Documents exchanged included correspondence, drawings and draft documents between the parties. During this correspondence and meetings reference was made to entering into a JCT contract, although this did not occur. At the conclusion of the contract Redworth's position was that Brookdale owed it monies in respect of the total contract price, including variations.

Redworth took the matter to adjudication for outstanding monies that it believed it was due under the contract. The adjudicator found in favour of Redworth and ordered that Brookdale pay £210,576.67. Redworth then sought to enforce the adjudicator's decision. Brookdale resisted the application on the basis that the parties had not entered into a JCT contract, and the adjudicator had no jurisdiction to decide the matter.

The Issues

The claim was to enforce the decision of an adjudicator. His Honour Judge Harvey QC considered five issues, with the key issues being whether the contract included the JCT term and whether the contract was in writing within the meaning of section 107 of the HGCRA.

The Decision

The court reviewed the various correspondence and negotiation between the parties. In particular it noted that in April 2003 a draft Employer's Requirements was produced which stated that the "form of contract will be the JCT Standard Form of Building Contract with Contractor's Design 1998". The form was not attached to the document, but specific clauses were referred to. The dates of possession and completion were blank, and the liquidated and ascertained damages were described as being £20,000 per week. The contract itself was not entered into.

The court held that the key meeting between the parties was held on 21 November 2003 and the parties agreed the following: a revised contract price; the liquidated and ascertained damages; the time for payments following valuations; the date for the start of works; the period for the carrying out of the works and the completion date. The JCT terms were not discussed at this meeting.

His Honour Judge Harvey QC determined that the JCT terms were not part of the contract. He stated that as at the November 2003 meeting there was, at most, a mere intention to enter into a JCT contract that did not materialise. Neither party pursued the matter. The JCT contract was never signed, executed or orally agreed.

The court held that the adjudicator did not have any jurisdiction on the ground that there was no contract, or no contract that complied with section 107.

Comment

This case highlights that an intention to enter into a JCT contract is not on its own sufficient to form a contract containing the terms of the JCT standard form. If the parties wish to enter into a JCT contract, and rely upon the remedy of adjudication, they need to ensure that the written contract is executed.

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