

Legal Briefing

Had a respondent received proper notification of adjudication and subsequent enforcement proceedings?

Lobo v Corich & Anor [2017] EWHC 1438

Ted Lowery
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Before Mr Justice Stuart-Smith

In the Technology and Construction Court

Judgment delivered 21 June 2017

The facts

During May 2010 Lobo engaged Corich to carry out building works at a property in Chelsea. In the Contract Particulars Corich's address for notices in writing was given as 7 Gunter Grove, London.

On 14 April 2014 Lobo delivered by hand termination notices to 7 Gunter Grove and to 25 Gunter Grove and 183 Chatsworth Court, Kensington, being residences that Lobo believed were used by Corich.

In accordance with the contract termination procedure, on 15 January 2016 the architect issued a certificate indicating that Corich owed Lobo over £600k. The certificate was sent by post and subsequently hand delivered to Chatsworth Court, 7 Gunter Grove and 25 Gunter Grove.

Lobo commenced adjudication in September 2016. The Notice of Adjudication and the Referral were delivered to 7 Gunter Grove, 25 Gunter Grove and 183 Chatsworth Court and also sent by e-mail to four e-mail addresses that Corich had used previously, with the subject heading "Adjudication: *Lobo v Corich*". Corich did not participate in the adjudication or in Lobo's subsequent enforcement proceedings which were served by hand at 7 and 25 Gunter Grove on 18 January 2017.

On 8 February 2017 Lobo obtained summary judgment for £630k plus costs. The judgment was delivered by post to 25 Gunter Grove and by e-mail to the same four addresses. Lobo then obtained an interim charging order on 25 Gunter Grove and the order was delivered by post to 25 Gunter Grove on 1 March 2017 and also sent by e-mail to the same four addresses previously used.

On 27 March 2017 Corich issued a Part 8 application to set

aside the adjudicator's decision on grounds that as he had never been properly notified of the adjudication, a breach of natural justice had occurred. Corich also issued an application in Lobo's enforcement proceedings that the charging order be set aside or the proceedings stayed pending the Part 8 Application.

The issue

Were there sufficient grounds to justify setting aside the adjudication decision and the enforcement judgment?

The decision

Whilst Corich acknowledged that he had frequently used the four e-mail addresses to which documents had been sent, the judge did not accept his explanation that he only replied to those e-mails which he thought that he needed to reply to without looking at the subject headings. The judge also said he was in no doubt that Corich should have been aware of the documents that were served by post and by hand at 25 Gunter Grove where no evidence had been offered suggesting a wide spread loss of post or any explanation given as to why all of the documents delivered should have gone missing. The judge concluded that Corich had taken a conscious decision to not open the e-mails and to not look at the documents physically delivered to 25 Gunter Grove.

In the absence of any specific agreement between the parties then s.115(3) of the HGCRA required service by any effective means. On the facts 25 Gunter Grove was an effective address for service because it was Corich's most consistent and reliable address throughout the relevant period and there had been no definitive statement from Corich that he would not receive correspondence at that address. Therefore the Notice of Adjudication and the Referral were effectively served and the adjudication was properly constituted.

Similarly, the enforcement proceedings were properly served at 25 Gunter Grove which for the purposes of CPR 6.9 comprised Corich's usual or last known place of residence and was the place with which he had the closest residential connection. There was no reason to believe that Corich no longer resided there and the judge considered that had enquiry been made, it was unlikely that another address would have been supplied for the purposes of substituted service.

Where all of the relevant documents had been duly served upon Corich, there could be no suggestion of a breach of natural justice or procedural unfairness so there were no grounds for challenging the adjudicator's decision, for setting aside the judgment or charging order or for granting a stay.

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Commentary

The judge considered the differing requirements for the service of documents in adjudication and in court proceedings. In either case, where the respondent's location is uncertain, the claimant would be well advised to take extra steps to ensure good service. Here, Lobo's approach of delivering documents to three postal addresses and four e-mail accounts was successful but the judgment suggests that where genuine doubt remains, the prudent claimant should actively seek positive confirmation that the respondent has received the relevant documents.