



LEGAL BRIEFING

Supablast (Nationwide) Ltd v Story Rail Ltd [2010] EWHC 56 (TCC), Mr Justice Akenhead

The Facts

Supablast was engaged by Story under a subcontract to carry out works in relation to a railway bridge on Merseyside. Story invited Supablast to tender for grit blasting and painting work and sent an accompanying CD which also contained details of associated scaffolding and steelwork repairs. Story provided a quotation which also included a fully priced bill of quantities for the other works included on the CD.

Following negotiations, Supablast submitted a quote on 17 December 2007 for the grit blasting, painting and scaffolding works. The next day, Story replied accepting the quoted sum, in a letter headed "Letter on [sic] Intent", and stating that the conditions of the contract would incorporate the ICE 6th Edition form of subcontract.

Subsequently, on 20 December 2007 Supablast submitted a quotation for the steelwork repairs. A meeting between the parties was held on 16 January 2008. The minutes of the meeting detailed, amongst other items, that (i) the 'description of Works to be Sub-Let' included the blasting, painting, scaffolding and steelwork; (ii) the subcontract price was broken down into the blasting, painting, scaffolding and steelwork; and (iii) that there was only one programme period described for the subcontract works.

Throughout the course of the works, payment applications included all of the works and were paid by Story in one payment. Disputes arose on the final account which Supablast referred to adjudication. In its response, Story contended, for the first time, that there were in fact two subcontracts, one for the blasting, painting and scaffolding and one for the steelwork, which meant that the adjudicator did not have jurisdiction. Following submissions from the parties, the adjudicator decided that the steelworks were a variation to the original subcontract, and that therefore he did have jurisdiction to act.

The Issue

The main issue was whether there was in existence (i) one contract incorporating all the works; (ii) one contract that had been varied to include the steelwork; or (iii) two separate contracts.

The Decision

The Judge held that:

- (i) There was only one contract concluded between the parties. He considered that it was beyond doubt that a contract for the blasting, painting and scaffolding had been created by the 17 and 18 December 2007 letters. The factual matrix showed that the parties knew Supablast had tendered for the steelwork and prior to the 16 January meeting the parties had negotiated the price;
 - (ii) The minutes of that meeting unequivocally showed that all the works were to be carried out under the umbrella of a single agreement. This was demonstrated by the description of the subcontract works, the reference to a single subcontract price which was broken down to include the steelwork, and single dates for the commencement and completion of the works; and
-

(iii) Story did not communicate to Supablast, at any time throughout the contract works, that the parties were operating under two contracts. The first time it was mentioned was in response to the adjudication. This meant that even if there were two contracts Story was estopped by its conduct from relying on this issue.

Accordingly the adjudicator had jurisdiction and the decision was enforced.

Comment

This is another decision that highlights the importance of having a written contract in place detailing the parties' agreement at the time the agreement is made. In this instance the parties incurred substantial legal costs in disputing what contract had been agreed. This would not have been necessary if a properly drafted, unambiguous contract had been in place.

The Judge also made obiter comments which emphasise the difficulty for an adjudicator to decide on his jurisdiction where an issue of jurisdiction and substance overlap. However, the Judge gave guidance that where matters of substance and jurisdiction overlap, an adjudicator will generally be acting within his jurisdiction if he resolves a jurisdictional issue that is also part of the substantive dispute.

Chris Farrell
February 2010