



LEGAL BRIEFING

Southern Electric v Mead Realisations

[2009] EWHC 2947 (TCC), Mr Justice Akenhead

The Facts

Mead engaged Southern to provide mechanical and electrical services at a business centre in Somerset. Southern referred a dispute to adjudication and were awarded £124,511.26 plus VAT and interest of £6,907.13, payable within 7 days. On the seventh day Mead proposed making payments by instalments but Southern instructed solicitors and threatened that unless payment in full was received forthwith, court proceedings would be issued to enforce the decision.

On the deadline for payment given by Southern, Mead responded stating that it had paid £50,000 and had to discuss matters over this amount with its bankers. Four days later Southern commenced proceedings in the TCC. Mead acknowledged service of the proceedings by letter, after the prescribed date. Mead did not dispute the decision of the adjudicator but proposed to the TCC, copied to Southern, that it would pay £50,000 by the end of October 2009; £50,000 by the end of November 2009; with the balance to be paid by 15 December 2009.

Southern responded through its solicitors effectively agreeing to be paid by the instalments, concluding with a balancing payment. Correspondence continued between the parties as to the amounts included in the balancing payment. Southern stated that its legal costs were to be included and set out the amounts incurred to date, and also made reference to costs in a telephone conversation between the parties.

The Issues

- (i) Had a settlement had been reached? Mead thought one had, Southern thought not.
- (ii) If so, did that settlement include a term whereby Mead would pay Southern's legal costs incurred in enforcing the adjudicator's decision?

The Decision

The Judge found that the original letter from Mead to the TCC, copied to Southern, was an offer. The offer included a term that Mead would pay the balance. As Southern had expressly claimed costs on the TCC claim form, that Mead had acknowledged, the Judge thought that objectively the offer by Mead must be seen to include costs as well as interest. Therefore when Southern wrote back confirming the dates and that it would receive the balance by 15 December, the parties had an agreement in principle that Mead would also pay interest and costs.

Comment

This case demonstrates the importance of each party making sure that the terms of an offer to settle are clearly and precisely understood by all parties. It is advisable to seek legal advice when concluding a settlement, particularly if costs are involved.