



LEGAL BRIEFING

Partner Projects Ltd v Corinthian Nominees Ltd [2011] EWCA 2989 (TCC), Mr Justice Edwards-Stuart

This case concerned whether the adjudicator had jurisdiction to award interest on sums claimed and whether a stay of execution should be granted due to the financial position of the claimant.

The Facts

On 10 October 2003 Corinthian Nominees Ltd ("Corinthian") entered into a 1998 JCT building contract with Partner Projects Ltd ("PPL") for the construction of a five bedroom house in St John's Wood London.

Corinthian was controlled and owned by Mr David Conway. PPL was owned and controlled by Mr Martin Lovatt. PPL had been financed by loans in the region of £1.13 million from Mr Lovatt but since August 2006 the company had been dormant. PPL's accounts showed a loss of £95,673 from December 2007 and a balance sheet net liability of £2,244 in December 2010.

On 3 August 2006, Corinthian terminated the contract. At the date of termination around £1,689,050 had been paid by Corinthian to PPL. Following termination, PPL made a number of claims for variations, delay and significant increased costs and expenses as a result of alleged delays and design changes.

Between 2006 and 2011, five adjudications took place before Mr Christopher Linnet. Mr Linnet awarded a number of extensions of time and decided that the contract had been wrongfully determined by Corinthian.

The sixth adjudication concerned a referral to Mr Stuart Kennedy as adjudicator. The adjudicator issued his decision on 14 September 2011 and awarded PPL the sum of circa £850,000 including the sum of £203,000 in respect of interest plus additional interest at a daily rate thereafter.

Corinthian resisted enforcement of the adjudicator's decision on the basis that the adjudicator had exceeded his jurisdiction by awarding interest under the Late Payments of Commercial Debts (Interest) Act 1998, where PPL had not made such a claim in its notice of adjudication or referral. Alternatively, the adjudicator had awarded interest under clause 30.1.1.1 of the contract which gave a right to interest on certified sums only. Corinthian also sought a stay of execution on the basis that PPL were unlikely to be able to repay any sums paid to it.

The Issues

The main issues were:

- (i) Whether the adjudicator had jurisdiction to award interest; and
- (ii) Whether a stay of execution should be granted.

The Decision

Mr Justice Edwards-Stuart held that the adjudicator had not exceeded his jurisdiction in awarding interest and granted summary judgment in the full amount of the adjudicator's award. Corinthian's application for a stay of execution was refused.

With regard to the issue of interest, Mr Justice Edwards-Stuart found that the adjudicator had not taken the rate of interest that would have been payable under the Late Payment of Commercial Debts (Interest) Act 1998. As to the award of interest under clause 30.1.1.1 of the contract, it was accepted that this clause did not confer power to award interest on sums that had not been certified.

However, it was held that the adjudicator was able to award greater sums than those certified by the architect as he was empowered to open up and review the certificate. Once this had been done the adjudicator was entitled to award interest on the sums due under the corrected certificate and this was not an excess of jurisdiction.

Mr Justice Edwards-Stuart agreed with the general proposition that an adjudicator has no free standing or inherent power to grant interest in the absence of a contractual provision granting such power.

On the application for a stay of execution, the question was whether PPL could repay the amount at a time when it was likely to fall due for repayment, and not whether PPL could repay the amount now. Reference was made to the guidelines laid down in *Wimbledon v Vago*¹. In reaching his decision, Mr Justice Edwards-Stuart accepted that it was more likely than not that PPL would be unable to repay the full amount if ordered to do so but that it would be able to repay a substantial part of the amount.

It was noted, however, that this finding of fact was not decisive in the exercise of the court's discretion. A strong factor in favour of refusing the stay of execution was the fact that PPL's financial position was due, at least significantly in part, to Corinthian's failure to pay. Mr Justice Edwards-Stuart also noted the inescapable reference to the fact that Corinthian had been trading whilst insolvent.

Comments

The court's decision was based heavily on the specific facts of the case. It is apparent that Corinthian's conduct was a significant factor in the court exercising its discretion. In particular, it was noted that PPL's financial position had been brought about largely due to Corinthian's failure to pay and the fact that Corinthian had been trading whilst insolvent.

It comes as no surprise that the court supported the adjudicator's decision on the award of interest.

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¹ *Wimbledon Construction Company 2000 Ltd v Derk Vago* [2005] EWHC 1086 (TCC)