



LEGAL BRIEFING

Everyone's a loser

Margaret Tomlinson v Iain Wilson (t/a Wilson & Chamberlain)

TCC (Leeds), HHJ Langan QC

The Facts

Ms Tomlinson ("Tomlinson") and Mr Wilson ("Wilson"), a builder, entered into a contract for the construction of a small kitchen and bathroom extension to Tomlinson's house in Easingwold. The parties agreed that the contract sum would be paid in stages.

Wilson had constructed the extension to roof level when work ceased. This work involved the laying of a concrete raft as the foundation for the extension. Tomlinson alleged that the work to the raft was so defective that the only appropriate course of action would be to demolish everything that had been laid down or erected so far and to rebuild the extension from scratch. Wilson alleged that the raft was fit for purpose although it was common ground that it had not been constructed in accordance with instructions.

No work was done on site after 17 June 2005. On either 10 or 11 June 2005 there was a conversation between Tomlinson and Wilson. Tomlinson advised Wilson that he "obviously must be broke" because he was "always looking for money" but Tomlinson agreed that she would make the penultimate payment when the roof tiles were on. On 21 June 2005 Wilson wrote to Tomlinson advising that he would suspend all work on the property until and only if the matter of payment was resolved. The parties then agreed that works would be suspended pending a survey on the property.

On 15 July 2005, Tomlinson's solicitors, Moore & Company, wrote Mr Wilson a letter in accordance with the pre-action protocol for construction and engineering disputes. This letter alleged that Wilson was in breach of contract and alleged that Wilson had failed to design and construct the extension with reasonable care and skill and in a proper and workmanlike manner. In addition, the letter stated that it was never a term of the contract that stage payments would be made and Wilson could not insist on stage payments being made. Wilson was also forbidden to attend the property. Wilson replied to this letter on 20 July 2005 rejecting Tomlinson's claims.

The Issues

Had the contract been repudiated by Tomlinson's pre-action protocol letter? If not, were the raft foundations so defective that the extension required demolition?

The Decision

The pre-action protocol letter amounted to an announcement on Tomlinson's behalf that she regarded the project at an end. The letter envisaged that Wilson, after being excluded from the property, might return to work, but this would be by Tomlinson's permission, on her terms, and without the right to stage payments which had been part and parcel of the original contract.

Wilson's letter in reply to the pre-action protocol letter accepted this repudiation.

It was a term of the contract that the concrete foundation was required to be built in accordance with the Building Regulations and the foundation must be adequate for the purpose of supporting the structure. The evidence showed that there were defects in the foundations but that these defects could be cured by repair rather than demolition and rebuilding.

Comment

The damages awarded to Wilson were only £500. The Judge commented that this case was an "unfortunate example" of a small building dispute in which, at the end of the day, there is no real winner. In addition, he highlighted during the course of the case that the parties were "set on a course which seemed, in terms of money, one of mutually assured destruction". The parties' costs in pursuing these claims would have run to thousands of pounds. In cases of this kind, parties should seek to resolve claims by alternative dispute resolution mechanisms so that the outcomes are beneficial both financially and to their business relationship.

Charlene Linneman
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