Legal Briefing

Traditional Structures Ltd v H W Construction Ltd

[2010] EWHC 1530, (TCC), HHJ David Grant

The Facts

Traditional Structures submitted a tender for steelwork and roof cladding. It provided a price for each element. There were two versions of the tender, and they were identical except that one did not contain a reference to the price for cladding. HW Construction accepted all the works for a total of approximately £38,000.00. HW Construction maintained that that was the contract sum whilst Traditional Structures said that it was obvious that the figure related to only one part and that the cladding was a further approximately £32,000.00.

The Issues

The main issue was whether the subcontract should be rectified on the grounds of a unilateral mistake in order to include the missing reference to the cladding in the quotation. In other words should the price be increased (so rectifying the mistake) or was the subcontractor bound to carry out the work for the price recorded on the face of the subcontract. A further issue was whether Traditional Structures should be paid a reasonable price for the cladding work in any event.

The Decision

The Judge decided that that subcontract should be rectified in order to add in the missing line containing the price for the cladding. The usual position is that parties are held to the price in the contract for the work. However, the Judge considered that any reasonable reader of the tender would know that the figure of £37,573.43 plus VAT related only to the structural steelwork. The Judge considered that the contractor "wilfully and recklessly failed to enquire" as to whether the price included the cladding works and any honest and reasonable person would have questioned this. The contractor clearly shut his eyes to the obvious and so had actual knowledge of the mistake. This was unconscionable and so the contract should be rectified.

In addition, even if the subcontract had not been rectified, Traditional Structures were entitled to be paid a reasonable price for the works under Section 15 of the Supply in Goods and Services Act 1982. So in any event they would have been paid a reasonable price for the carrying out of the cladding and the structural works.

Comment

The traditional view has been that a party is held to the price that they submit for the works. A unilateral mistake is very rarely invoked in order to try to rectify mistakes. A claimant needs to prove that both parties to the contract clearly knew that the written contract was wrong. Here, the Judge decided that the managing director of the contractor would have known about the mistake because it was palpably inconsistent with the information exchanged between the parties.

So, it seems if a party turns a blind eye when the other party has made a mistake so as to snatch at a bargain the courts might well consider rectifying the contract in order to reflect a more honest and reasonable position.

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