



LEGAL BRIEFING

A snag in the process

Sydenhams (Timber Engineering) Ltd v Chg Holdings Ltd (2007)

TCC Judge Peter Coulson QC [2007] EWHC 1129

The Facts

Sydenhams (Timber Engineering) Ltd, the claimant timber company, made a claim in respect of unpaid design and construction work it carried out on a hotel in Bournemouth for CHG Holdings Ltd, the defendant developer. CHG contended that there was never a direct contract between it and Sydenhams and that Sydenhams was in fact a subcontractor to the main contractor, Rybarn Ltd.

At CHG's request, Sydenhams had provided a quote for the design, supply and erection of timber frames and CHG signed the order for manufacture. There was no main contract in place between Rybarn and CHG until some months later. Payment for the works was then discussed between all three parties, and it was agreed that some of the works would be paid for by CHG in instalments through Rybarn. Rybarn was in financial difficulty and failed to pay Sydenhams, so Sydenhams suspended work. CHG then paid Sydenhams directly, in order to get Sydenhams back on site and agreed to continue to do so until the works were completed. Sydenhams duly completed the work and CHG signed further orders for manufacture. Sydenhams was never paid. Rybarn went into administration and was not in a position to make any payments.

CHG argued that it was Rybarn, not themselves, who were liable to Sydenhams. In any event, CHG argued that the original order for manufacture was nothing more than a letter of intent and was not contractually binding.

The Issue

Whether there was a direct contract between CHG and Sydenhams which gave rise to a liability on the part of CHG to pay the sum in dispute to Sydenhams.

The Decision

The court held that the signed order for manufacture and the final quotation had constituted a binding contract between Sydenhams and CHG. It satisfied the formal requirements of a contract; namely that there had been certainty as to who the parties were, the work scope and the price. Sydenham's terms and conditions had also been incorporated. The words used in the order for manufacture could only be construed as creating a series of rights and obligations for both parties. There was no contract in place between Rybarn and Sydenhams; indeed, Rybarn's only role had been as a conduit for payment to Sydenhams.

Further, the court found that following Rybarn's financial difficulties, CHG agreed to make direct payment to Sydenhams in respect of the remainder of the works. This was further confirmed by the second order for manufacture, for which CHG had accepted total liability. CHG was therefore liable to pay any sums outstanding in respect of those works.

Comment

This case provides a reminder to those involved in construction projects to ensure that the formal contractual arrangements are in place before carrying out any works or assuming any obligations to pay. At the very least, subcontractors should be made aware that they are dealing with a contractor, rather than the main employer. In this case, the absence of a contract between a developer and the timber engineer, coupled with the conduct of the contractor, meant that the developer escaped liability whilst the contractor was left with a large bill to pay.

This case further highlights the danger of contractors assuming employers' responsibilities and making direct payments to subcontractors. Such conduct may serve to reinforce a direct contractual relationship between the contractor and subcontractor, with the contractor assuming liability accordingly.

Rebecca Saunders
September 2007
