



LEGAL BRIEFING

The sound of silence

A C Yule & Son Limited v Speedwell Roofing & Cladding Limited

TCC Judge Peter Coulson QC [2007] EWHC 1360

The Facts

The claimant had commenced adjudication proceedings against the defendant on 20 February 2007 in accordance with the Scheme for Construction Contracts provided by the Housing Grants, Construction and Regeneration Act 1996. The adjudicator's decision was therefore due before 20 March 2007. The adjudicator sought an extension of time, and Yule, as the claiming party, granted him a 14-day extension, thus extending the adjudicator's time for completion of his decision to 3 April 2007.

The defendant requested further time to respond to material provided by the claimant. The adjudicator agreed that the defendant could have further time, but he also requested two more days to issue his decision, being 5 April 2007. The defendant made no express response to that request at all. Further delay was caused by the failure of the defendant to produce documentation as quickly as it had promised.

The adjudicator provided his decision on 4 April 2007. In it, he decided that the claimant was entitled to £191,661.42 plus interest, together with his fees. The defendant did not pay any part of the sums awarded and contended that, because the decision was provided after the agreed extended period, it was a nullity. Following the defendant's failure to pay the sums awarded, the claimant commenced these proceedings and issued a CPR Part 24 Application.

The Issues

Judge Coulson was faced with two issues. First, did the adjudicator's failure to reach his decision within the time limits imposed by the Act render the subsequent decision a nullity? Secondly, did the defendant's failure to respond to a request for an extension of time amount to an agreement to the requested extension?

The Decision

It was held that the relevant obligation in paragraph 19 of the Scheme of the Act, that the adjudicator shall reach his decision within 28 days and/or any agreed extended period, means that in order to be valid, an adjudicator's decision must be completed within that period. In this case it appeared that the adjudicator's decision was completed out of time and was therefore a nullity.

However, on a closer examination of the facts of the case, Judge Coulson held that when an adjudicator asks for more time, there is a clear obligation on the part of both parties to the adjudication to respond plainly and promptly to the request. If, in breach of that obligation, one party does not respond at all, there is a very strong case for saying that they accepted, by their silence, the need for a required extension.

In this case the defendant participated in a process which made it impossible for the adjudicator's decision to be provided by 3 April 2007, and by that conduct they made it plain that they had in truth accepted the requested extension. The defendant's silence in response to the request for an extension and their participation in the delay of the exchange of information meant that the defendant was estopped from denying that the adjudicator's decision was valid. The adjudicator's decision was therefore enforced and judgment given in favour of the claimant for the principal sum sought pursuant to CPR Part 24.

Comment

The courts have in the past criticised the conduct of a party in adjudication who has failed to bring a fact or issue to the attention of the other side or to the adjudicator in circumstances where, much later in enforcement proceedings, that party has sought to rely on that fact or issue to argue that the decision was unenforceable.

This case is a clear reminder that parties to adjudication proceedings need to make their position clear from the outset if they wish to challenge the adjudicator's decision in enforcement proceedings. Parties cannot seek to rely on these arguments if they are not made during the course of the adjudication once the adjudicator has produced a decision that it does not like.

***Birgit Blacklaws
September 2007***
