



LEGAL BRIEFING

On the paper trail

Mast Electrical Services v Kendall Cross Holdings Limited

TCC High Court of Justice (Queen's Bench Division), Jackson J [2007] EWHC 1926

The Facts

The claimant (subcontractor) issued proceedings against the defendant (main contractor) for declarations that the subcontract arrangements in respect of three construction projects in Newcastle (Vale House, Maytree House and Hawthorn Estate) constituted contracts in writing for the purpose of section 107 of the Housing Grants, Construction and Regeneration Act 1996.

The defendant subcontracted the electrical work for the construction projects and accepted tenders from the claimant. The claimant provided a revised quotation based on properties that were considered to be comparable to those on which it would be working. These rates were accepted by the defendant in principle. Specific quotations for Vale House and Maytree House were submitted at a later date. Disputes arose between the parties over what rates, if any, had been agreed. Quotations were submitted by the claimant in relation to Hawthorn Estate and work commenced the following month. The claimant eventually ceased work on the site due to disputes over the agreed rates.

The claimant commenced adjudication in respect of Vale House. It was defended on the basis that there was no contract in writing between the parties and therefore the adjudicator lacked jurisdiction. The adjudicator agreed with that submission and resigned. Accordingly, in order to establish its entitlement to adjudicate in respect of all three contracts, the claimant commenced proceedings.

The Issue

The issue before the court was whether or not the subcontract arrangements in respect of the three construction projects constituted contracts in writing for the purposes of section 107 of the Act.

The Decision

Mr Justice Jackson held that the documents relied upon by the claimant in respect of all three projects did not satisfy the requirements of section 107 of the Act. Generally, the documents failed to set out, evidence or record all the material terms of the subcontract, particularly in respect of any agreed payment rates.

Accordingly, it was highly probable that there was no contract at all between the claimant and the defendant and as a result, the claimant was not entitled to the declarations it sought and was unable to refer its payment disputes to adjudication.

Comment

From time to time, building projects proceed without the parties ever getting round to executing a formal contract. It then becomes necessary to analyse the correspondence, minutes of meetings and so forth, in order to ascertain whether a contract was ever concluded.

In this case, the claimant would have been entitled to refuse to start work before all contractual terms had been agreed and recorded in writing. As in a number of cases, commercial pressure on the contractor or the subcontractor overrode legal considerations and the parties decided to get on with the project and hope for the best.

This case is a timely reminder that in order to obtain the benefit of adjudication provisions of the Act it must be established not only that there was a construction contract but also that the contract satisfied the requirements of section 107, in particular, that there is an agreement in writing.

***Birgit Blacklaws
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