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Legal Briefing

Ted Lowery looks at a case in which the contract terms still required full payment notwithstanding that the materials supplied were acknowledged to be defective

Readie Construction Ltd v Geo Quarries Ltd
[2021] EWHC 3030 (QB)

Before Mr Justice Martin Spencer

In the High Court Appeals Centre

Judgment delivered 12 November 2021

The facts

On 11 July 2018, Geo entered into an agreement to supply to Readie GSB Type 1 aggregate for £19.50 per tonne to be delivered to a construction site in Bedfordshire. On the same day, Readie completed a credit agreement with Geo that incorporated Geo's standard terms and conditions of sale, which in clause 4.1 provided that payment was to be made in full *"... without any deduction or withholding whatsoever on any account ..."* by the end of the calendar month following the month in which the invoice was dated.

On 17 August 2018, Readie issued a purchase order for aggregate with quantities to be called off and delivered in batches to the site. Prior to 10 September 2018, Geo delivered and Readie paid for some 27,000 tonnes of aggregate. Between 10 September and 15 October 2018, Geo delivered a further 9,576 tonnes and issued an invoice for £224,091.52. On 15 October 2018, Readie's site staff discovered that, following a period of heavy rain, the unused aggregate had liquefied and turned into slurry. Readie immediately suspended payments.

Geo commenced proceedings in the County Court seeking summary judgment on grounds that clause 4.1 precluded any abatement and that section 49(2) of the Sale of Goods Act 1979 applied, i.e. that *"Where, under a contract of sale, the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such a price, the seller may maintain an action for the price, although the property in the Goods has not passed and the Goods have not appropriated to the contract."*

The County Court judge granted Geo summary judgment finding that: (i) clause 4.1 was not contrary to the Unfair Contract Terms Act 1977 and, as such, was sufficiently clear and comprehensive to exclude a defence in abatement, even when something different from that contracted for had been supplied; and, (ii) that section 49(2) applied.

Readie appealed.

The issue

Should the summary judgment in favour of Geo be upheld?

The decision

The judge noted that the force of clause 4.1 would be nullified if Readie could pre-empt matters by refusing payment because of perceived defective delivery. He considered that the clause was reasonable within the Unfair Contract Terms Act where payment in full was a quid pro quo for credit and where the clause was legitimately concerned with cashflow and deferred but did not prevent cross-claims on a pay now, argue later basis.

The judge did not accept that, under clause 4.1, the obligation to pay would arise if there had been no delivery at all or if, instead of aggregate, Geo had supplied something entirely different like teddy bears (to use the judge's example). He said that the concept of purported delivery applied so that where Geo had supplied goods which comprised a bona fide purported delivery under the contract (and there was no fraud), then there had been delivery under the contract for the purposes of the terms and conditions, including for the purposes of clause 4.1. Thus, Readie was not entitled to withhold payment on grounds that the aggregate did not come up to specification and there could be no abatement.

Turning to the Sale of Goods Act, then the judge considered that the focus should be on the time of delivery and the time of payment; if these are divorced from each other under the terms of the contract, then the price is payable on a day that is ascertainable irrespective of the delivery or quality of delivery in line with section 49(2). Where Geo's terms and conditions required payment to be made by the end of the calendar month following the month of delivery, this comprised a term requiring payment at a time that was ascertainable and that was not linked to the nature of the delivery, hence section 49(2) was engaged.

Accordingly, the judge dismissed the appeal and confirmed summary judgment in favour of Geo.

Commentary

It may seem surprising that Geo should have been entitled to full payment for defective aggregates but this outcome was provided for in the contract terms; both the judge at first instance and on appeal considered that clause 4.1 was reasonable and justified by commercial objectives (which did not preclude a subsequent cross-claim by Readie for a refund).

The obvious message here is that suppliers' terms and conditions should always be checked to ensure that purchasers do not inadvertently commit to paying for materials that would be as much use as a lorry load of teddy bears.

Ted Lowery
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