

JUDGMENT : MR JUSTICE AKENHEAD: TCC. 30th October 2007.

Introduction

1. On 23 October 2007, I handed down judgment in this case. The Claimant ("Ringway") was a contractor employed by the Defendant ("Vauxhall") to carry out various works in connection with a new vehicle distribution centre at Vauxhall's premises in Cheshire. Ringway had referred a dispute to adjudication. The Adjudicator had ordered Vauxhall to pay Ringway £1,303,704.95 plus VAT and interest together with his fees and expenses. Ringway issued proceedings and applied for summary judgment to enforce that decision. Vauxhall had instituted other proceedings seeking declarations that the Adjudicator had no jurisdiction to determine that which he had determined.
2. I decided that the Adjudicator had jurisdiction to decide as he did and that his decision dated 14 August 2007 was enforceable and should be enforced. Judgment to that effect was given.
3. On the handing down of the judgment, I was asked to deal with costs and interest. I dealt with the question of costs there and then. However, the question of interest raises a new and interesting point as to the discretion (if any) of the Court in relation to the award of interest.

The Issue

4. The issue is essentially whether or not the Court upon the enforcement of an adjudicator's decision has a discretion to order interest upon any sum adjudicated due and payable for a longer period (and possibly at a different rate) to that allowed by the adjudicator; if so, how should that discretion be exercised?
5. The issue arises in this way. The Contract between the parties in the standard JCT form (With Contractor's Design 1998 edition) provided for Applications for Interim Payment to be made from time to time. In provisions which mirrored those set out in Section 110 of the Housing Grants, Construction and Regeneration Act 1996, the Employer was within seven days after receipt of such Application to give a written notice to the Contractor specifying the amount of payment proposed to be made. In another provision mirroring Section 111 of the HGCRA 1996, provision was made for the Employer within a set time to give a written notice to the Contractor. Clause 30.3.5 stated that where the Employer (Vauxhall in this case) did not give any written notice pursuant to these provisions it was to pay the Contractor the net amount stated in the Application for Interim Payment.
6. Given that Interim Application No. 11 dated 16 May 2007 was not responded to in any way within the periods called for, it could thus properly be said that the net amount stated as due became due on 24 May 2007.
7. If Interim Application No. 11 was, upon proper analysis, an Interim Application for Payment under the Contract, it would therefore seem that there would be no defence to any claim for the net sum applied for if the Clauses 30.3.3 and 30.3.4 notices were not given in time. It is accepted that, if this Interim Application No. 11 was a valid Application, the requisite Clause 30.3.3 notice had to be in by no later than 24 May 2007.
8. The dispute referred to adjudication was Ringway's claim for payment in respect of Interim Application No. 11. It is clear that the primary and possibly only point which it took was that, due to the absence of the Clause 30.3.3 notice, Clause 30.3.5 entitled them to payment of the net amount due under that Application. It is also clear from the papers before the Adjudicator and from the decision of the Adjudicator itself that Ringway claimed interest from 24 May 2007. The Adjudicator, however, awarded interest only from 2 July 2007. He formed the view (rightly or wrongly as the case may be) that the appropriate starting date for the imposition of interest was that date.
9. In the Particulars of Claim, Ringway claimed not only the principal sum which was the subject matter of the Adjudication decision but also interest pursuant to the Adjudicator's decision which provided interest at the rate of £375.04 per day but "further or alternatively, interest pursuant to section 35A of the Supreme Court Act 1981".
10. There was no issue between the parties that, at the very least, Ringway should have the interest ordered by the Adjudicator continuing until the date of payment pursuant to the judgment. However, the issue between the parties is whether or not the Court has a discretion under Section 35A of the Supreme Court Act to award interest for a longer period.

The statute

11. Section 35A(1) states as follows:
"Subject to rules of court, in proceedings (whenever instituted) before the High Court for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest, at such rate as the court thinks fit or as rules of court may provide, on all or any part of the debt or damages in respect of which judgment is given or payment is made before judgment, for all or any part of the period between the date when the cause of action arose and –
(a) in the case of any sum paid before judgment, the date of the payment; and
(b) in the case of the sum for which judgment is given, the date of the judgment."

Discussion

12. Mr Dennison QC for Ringway argues that the Court has a discretion in the circumstances of this case to relate interest back to 24 May 2007. He accepts that this is a discretionary matter but says that, essentially, the debt arose on 24 May 2007 when under the Contract, in the absence of a Clause 30.3.3 notice, the sum became due.
13. But Mr Jinadu, however, says that the claim in the court proceedings is for the enforcement of the Adjudicator's decision. That decision is only temporarily binding but it is to be enforced, he argues, because the contract

requires adjudicators' decisions to be complied with once properly given. That reflects the statutory requirement under the HGCRA 1996. Thus, he argues, the cause of action is or follows essentially from the failure on the part of the losing party in adjudication to honour the adjudication decision.

Decision

14. In my judgment, Mr Jinadu's arguments are correct. The nature of enforcement of adjudicators' decisions is contractual. Clause 38A.7.2 here requires the parties to "comply with the decision of the Adjudicator". The Adjudicator's decision may be right or wrong but, whether right or wrong, it is to be complied with. The failure (in this case by Vauxhall) to comply with the decision of the Adjudicator and pay the sum ordered was a breach of Clause 39A.7.2.
15. Thus, the cause of action upon which Ringway had to rely and indeed did rely in their Particulars of Claim is the breach of Clause 39A.7. They did not as such sue Vauxhall for a debt or damages said to have arisen as a result of Vauxhall's failure to pay the sum due under Clause 30.3.3.5.
16. Thus, to relate what has happened to Section 35A(1) (of the Supreme Court Act 1981), the date when the cause of action arose was the date when Vauxhall failed to honour the Adjudicator's decision. The Adjudicator ordered Vauxhall to pay the sums which he decided were due no later than 21 August 2007. Accordingly, by 22 August 2007, the cause of action had arisen upon which Ringway not only did rely but had to rely.
17. The Court does have a discretion. However, the goalposts or limits of that discretion are the date when the cause of action arose and the date of the judgment. However, because in this case the Adjudicator, sensibly, quantified interest up to 21 August 2007 and then ordered interest to be payable at a daily rate of £375.04 until the sum due under the decision was paid, it is that sum which will be allowable as interest.
18. The parties have agreed an order for interest on the basis of this judgment of £42,004.48 up to and including the day of judgment and interest at the daily rate of £375.04 from 24 October 2007 until the date payment is made.

MR STEPHEN DENNISON QC (instructed by CMS Cameron McKenna) and MR RUPERT CHOAT (Solicitor Advocate) appeared for the Claimant
MR ABDUL JINADU (instructed by Moran & Co.) appeared for the Defendant