

JUDGMENT : His Honour Judge Thornton Q.C. TCC. 4 November 1999

1. The claimant, Linaker Limited, has obtained a decision of an adjudicator arising out of its construction contract with the defendant, Riviera Construction. The decision, dated 6 August 1999, required the defendant to pay the claimant £4,261.07 plus VAT within 7 working days of 6 August 1999, the fees of the adjudicator of £775.00 plus VAT of £135.63 within 14 working days of 6 August 1999. These sums remain unpaid despite written requests for payment being sent to the defendant.
2. The claimant now claims this sum pursuant to CPR Part, 8. The originating claim form was served on the defendant on 16 September 1999 and a directions hearing was held by me on 15 October 1999. At that hearing, I gave directions as follows:
 1. Permission to amend the claim to add a claim for (i) retention in the sum of £692.96; (ii) for reimbursement of the adjudicator's fees of £910.63; and (iii) interest on all sums claimed.
 2. Service of the amended claim form, application notice and order on the defendant.
 3. The application for summary judgment would be dealt with by correspondence unless the defendant requested an oral hearing.
3. The requisite procedural steps have now been taken by the claimant and no request for an oral hearing has been communicated to the court by the defendant.

Claim for Sum Determined by Adjudicator

4. I have read the first witness statement of Michael Draper and it is clear that a valid decision of an adjudicator who has been validly appointed under the statutory scheme for adjudication has been issued in favour of the claimant. There is no apparent defence and the claimant is entitled to summary judgment. The sum claimed, to include the fees of the adjudicator provided for in the decision, of £5,920.51, is now due to the claimant.

Claim for Retention

5. The decision of the adjudicator provided that the Defects Liability Period should end on 1 October 1999. On the occurrence of that event, the second half of the retention withheld by the defendant became due and payable. This sum is £692.96 and is now due to the claimant.

Adjudicator's Fees

6. The adjudicator's Deed of Appointment, which he communicated to the parties before embarking on the adjudication, provided that the parties were jointly and severally responsible for his fees. The claimant has paid the sum of £910.63 to the adjudicator who, in his decision, directed that the defendant should be responsible for. This sum is now due to the claimant.

Interest

7. The claimant is entitled to interest. The appropriate rate is 8% and the period is from the date that payment should have been made until today's date, the date of the judgment. I will take, for convenience, the last date of payment of both sums claimed pursuant to the adjudicator's decision, as being 26 August 1999, being 15 working days from the date of the decision. Therefore, interest is due on the combined sum of £6,831.14 (£5,920.51 + £910.63) 8a [%] sic for a period of 68 days (27 August - 3 November). Interest is due on the retention of £692.96 at 8% from 8 October for a period of 26 days .(8 October - 3 November) . These sums are, respectively, £101.81 and £3.95.

Costs

8. The claimant has lodged a schedule of costs. Two initial considerations must be decided:
 1. Should fixed costs be awarded since this is a summary judgment application?
 2. Should High Court costs be awarded since this is, in terms of value, a fast track, County Court claim?

(1) Fixed or Assessed Costs?

9. Since it was necessary to apply to the court for directions to abridge time for the summary judgment procedural steps and for a paper hearing and since the procedure is new and unclear (both because adjudication enforcement is relatively new and because of the recent introduction of the CPR), it was reasonable to apply initially at an oral hearing and for me to use the provisions of CPR 45.1 to order that fixed costs will not be awarded and that, instead, assessed costs will be allowed.

(2) Fast Track or Multi-Track?

10. All claims in the TCC are multi-track., given its specialist jurisdiction. Claims arising out of construction contract adjudications are specialised and require speedy handling and, at least in these early days of such claims, it is reasonable to proceed in the TCC. Thus, a multi-track assessment of costs is appropriate.

(3) Assessment

11. The schedule of costs claims £3,802.32. The rates claimed are reasonable. However, I disallow the following:
1. 11/2 hours of Miss McGurran's time attending on opponent.
 2. 2 hours of Mr Draper's time working on documents.
 3. 6 hours of Miss Chotai and Miss McGurran's time working on documents.
 4. Miss McGurran's time of 3 hours attending at the hearing. Since counsel was instructed, only one representative from Shadbolt was necessary.
 5. 24 minutes of Miss McGurran's time in drafting the schedule of costs.
12. These deductions amount to £1281.00. The claimant is entitled to £2,521.32 exclusive of VAT for costs.

Conclusion

13. The claimant is entitled to:
1. Judgment for £7,524.41 plus interest of £105.76.
 2. Costs assessed at £2,521.32 exclusive of VAT.