

NEWSLETTER 117

JANUARY 2016

WHEN IS AN ORAL CONSTRUCTION CONTRACT FORMED?

2011 brought with it the long awaited amendments to the Housing Grants, Construction and Regeneration Act 1996. One of the most significant changes was that the definition of a “construction contract” was extended to include oral contracts, making it possible to refer a dispute arising under an oral contract to adjudication.

In the recent case of *Purton (t/a Richwood Interiors) v Kilker Projects Ltd*, the court considered whether an oral contract had been formed, and if so, whether it is necessary to be able to accurately identify the terms of the oral contract to be able to adjudicate.

Background

Mr Purton, operating under the trading name Richwood Interiors, had carried out substantial joinery works for Kilker Projects Ltd (“Kilker”) at the Dorchester Hotel. When Mr Purton submitted his final account seeking payment of £147,223, Kilker failed to issue a pay less notice in response, so Mr Purton commenced an adjudication claiming payment of the sum he had applied for. Kilker contended that there was no contract between the parties and therefore the adjudicator did not have jurisdiction, but the adjudicator found that there was a contract and awarded Mr Purton the full amount applied for. When Kilker failed to pay, Mr Purton proceeded to make an application to the court to enforce the adjudicator’s decision.

Alleged formation of an oral contract

Mr Purton’s case was that he had entered into the contract with Kilker at a meeting on or around the week commencing 9 June 2014 and that the parties had agreed a contract price of £350,000 and a list of items forming the scope of work.

Mr Purton said the contract had then been informally varied so as to encompass further work for additional payment.

Kilker contended that no meeting had taken place around 9 June 2014 and that no contract price had been agreed but that there was an agreed budget of circa £550,000 to £600,000.

It was a fact that Mr Purton had carried out the joinery works over a period of several months and Kilker had previously paid him around £650,000 for the work carried out.

Was there an oral contract?

The court found that it was “*clear beyond argument that there was a contract*” and stated that it was a stretch too far to suggest that the parties had had an ad hoc agreement to carry out works which Kilker paid for despite not being contractually obliged to do so. The court noted that there was correspondence between the parties acknowledging an initially agreed scope of work and an agreed price of £350,000. The court also pointed out that if Mr Purton had simply failed to turn up at site one day, Kilker would probably have been very unimpressed and this theoretical example strongly indicated that the parties were contractually obligated to one another. It was unrealistic to suggest the parties had not intended to create legal relations.

Did the dispute referred to adjudication have to relate to the right contract terms?

Having lost its argument that there was no contract, Kilker went on to argue that the adjudicator’s decision could only be enforced if the contract terms contended for by Mr Purton were indeed the terms of the contract. If Mr Purton failed to establish any element of the terms he alleged to form part of the contract (for example, if the contract price was found to be different to what Mr Purton contended), the decision could not be enforced. Kilker’s

argument was based on the principle that a claimant in enforcement proceedings cannot go beyond the matters it relied on in the adjudication.

Again, the court disagreed with Kilker, noting that all that section 108 of the Construction Act requires is that there is a construction contract and a dispute arising under it. The court stated that the right to adjudicate is not dependent upon identifying each and every contract term with complete accuracy. Insisting on a completely accurate description of the contract terms is not in keeping with the intention of adjudication, which is to provide quick and effective remedies for contracting parties.

The court also pointed to the fact that a different description of the terms of the contract would still have led to the same result because, regardless of the agreed scope of work and contract price, the Scheme for Construction Contracts still applied in relation to payment and Kilker had failed to serve a pay less notice. In a case where the adjudication would still have had the same outcome even if the terms of the contract on which the adjudicator's jurisdiction is founded are incorrectly described, the court will not shut out a claimant who seeks enforcement of the adjudicator's decision.

TENDER PRICES ARE FORECAST TO RISE BY 5.5% UP TO THE THIRD QUARTER OF 2016, DRIVEN PRIMARILY BY STRONG INPUT COSTS, AS OIL AND METALS PRICES BOUNCE BACK FROM SIGNIFICANT FALLS

Over the remainder of the forecast, it is anticipated that tender prices will rise between 5–6% per annum, driven by improving demand and pressure from rising input costs.

In the second quarter of 2015, tender prices rose by 1.1% compared with the previous quarter and by 4.7% compared with the same quarter in 2014.

The annual rate has fallen from the strong annual increases over the previous four quarters — between 8–10% — and is seen as

an indication that contractors are beginning to cope with the strong increase in workload experienced over that period. Tender prices are expected to continue to rise over the next six months, a view backed up by the recent BCIS survey of contractors.

Based on the latest construction figures published by the Office for National Statistics (ONS), growth in new work output is anticipated for 2015, with an increase of 6%. Growth is then forecast to slow over the following two years to 4% and 3% respectively, before growth picks up again in 2018 and 2019 to 4%, strengthening in 2020 to 5%.

It should be noted that recently, ONS significantly revised the 2015 data when it rebased the constant price data to 2012 from 2011.

Tender prices and building costs
(BCIS All-in Tender Price Index and BCIS General Building Cost Index)



NEW YEAR'S DRIVING RESOLUTION 1 OF 5 – BE SURE TO KEEP YOUR FLUID LEVELS TOPPED UP

It's important that you regularly check your car's fluid levels and top them up if necessary. Without regular checks, a minor problem such as a small drop in engine oil level can easily escalate into a major issue that could require hundreds of pounds of remedial work to fix.

To check your car's fluid levels you will need to be brave and look under the bonnet. But it's really simple to do.

The fluid levels you will need to check are:

- Oil
- Transmission fuel for automatics
- Brake fluid
- Power steering fluid
- Coolant
- Windscreen washer fluid

New Year's resolution – Read your car manual for the fluid levels ideal for your vehicle

NEW YEAR'S DRIVING RESOLUTION 2 OF 5 – LOSE SOME WEIGHT...

A bad habit to get in to is leaving unnecessary excess baggage in your car. From the golf clubs in the boot that you haven't used in six months, to the glass bottles you've been meaning to take to the recycling bank, it all adds up to extra weight that you are driving around.

Get rid of all those unnecessary items you have in your car. They all add excess weight. And remember: the heavier your car is, the more fuel you will use getting from A to B.

New Year's resolution – Don't use your car as a storage facility

STAFF CHANGES AT FEDERATION HEADQUARTERS

There are changes to staff at the Federation's offices in Stirling. Both Helen and Elizabeth are retiring at the end of January.

Their replacements are:

Louise Halliday is taking over from Elizabeth. Louise's hours are 9.00am to 1.00pm and her email address is louise.halliday@scottishdecorators.co.uk

Lorraine McGregor for SPADAC related queries. Lorraine's hours are 12.30pm to 4.30 pm Monday to Thursday and 4.00 pm on Fridays. Lorraine can be reached via email at Lorraine.mcgregor@scottishdecorators.co.uk

We would like to wish Helen and Elizabeth a long and happy retirement.

Monthly Bulletin of Indices

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
2005	711	713	713	713	713	714	769	769	769	768	769	770
2006	769	770	770	769	769	769	793	794	793	793	793	793
2007	793	795	795	795	795	795	824	825	825	825	826	826
2008	826	827	827	831	831	832	874	874	874	873	873	874
2009	874	875	874	874	875	875	875	875	875	876	876	876
2010	876	878	878	878	879	879	879	879	879	879	880	880
2011	880	885	885	885	888	889	898	898	909	908	908	911
2012	910	911	913	912	910	912	912	914	915	915	924	924
2013	939	940	943	942	941	938	937	937	938	937	937	937
2014	941	941	942	941	941	941	961	961	961	960	960	962
2015	961	961	961	960	969	969	993	993	993	993	993*	992*
2016	993*											

*Provisional

