

To be, or not to be [a contract] that is the question?

Westminster Building Company Ltd v Andrew Beckingham TCC 20 February 2004

Harvey Shopfitters Ltd v ADI Ltd [2004] 2 ALL ER 982

I have recently reported on the case of *Westminster Building Company Ltd v Andrew Beckingham* TCC 20 February 2004 which concerns provisions for adjudication in contracts when one party is a consumer. This case, however, raises another interest issue, concerning letters of intent.

To repeat the facts of the case, Mr Beckingham, a consumer, invited Westminster Building Company (“WBC”) to tender for refurbishment works to his own dwelling as residential occupier. The specification document which accompanied the invitation to tender, and which had been drafted by a firm of quantity surveyors for Mr Beckingham, incorporated by reference the JCT Intermediate Form of Contract 1998.

Mr Beckingham issued WBC a letter of intent in which he stated:

“I am confirming instructions for your company to proceed with the alteration and repair of the above premises in accordance with the specification and drawings sent to you by my surveyors Kirsop and Company on 23 April 2002 and your revised tender dated 14 June 2002 in the total sum of £256,931.50 plus VAT.

The works are to be commenced on 15 July 2002 and are to be completed by 18 October 2002.

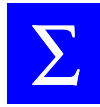
My surveyors will be progressing the preparation of the formal contract documents over the next few weeks for signature by both parties, in the interim please proceed to make arrangements for the implementation of the works. In the unlikely event of matters not progressing I would confirm that you will be reimbursed any reasonable expenditure in connection with the project.”

His Honour Judge Thornton Q.C. considered whether the letter of intent created a contract that governed the work and which incorporated the JCT Intermediate Form. He considered that the last paragraph of the letter was inconsistent with a full contract being entered into. The paragraph provided that the project might not progress, albeit that it was described as “unlikely event”, and that if the project did not progress, WBC would be reimbursed its reasonable expenditure. His Honour commented that if a full contract for the entirety of the refurbishment work was intended to be created by the letter of intent, the aforesaid provision would not have been necessary and, indeed was incompatible with such a contract since a full contract could only be terminated using the contractual provisions for termination contained in the JCT Intermediate Form.

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His Honour recognised that the letter did, additionally, provide that the works would proceed in accordance with the specification and drawings and the revised tender in the total sum of £256,931.50, and that if this paragraph stood on its own, the letter might have sufficed to create an offer addressed to Westminster to undertake the entirety of the refurbishment works pursuant to the JCT Intermediate Form for a lump sum of £256,931.50. His Honour continued, however, in stating that the words: “in accordance with the specification and drawings” were ambiguous in that they could constitute an offer to carry out the works on the terms included in the specification, which would incorporate the JCT Intermediate Form, or they could mean that the alteration and repair work was that defined in the specification and drawings so that only the parts of the specification which defined the works to be carried out were referred to. On this basis, Part 1 of the specification was not included in the offer contained in the letter of intent.

His Honour took the narrower reading of the letter of intent as the meaning intended by the letter when its words were read as a whole. This was because:

1. The first paragraph and the last paragraph of the letter had to be read together, and when this was done, it could be seen that the narrower meaning of the first paragraph was intended since that was the only meaning that was consistent with there being no completed contract created by the letter.
2. The specification envisaged that a formal contract under hand would be executed. The letter also envisaged that that would take place since it states that the formal preparation of the contract documents would be progressed for signature by both parties. In the interim, Westminster was to proceed to implement the works. These two provisions taken together made it clear that no contract would be entered into until the formal contract had been signed by both parties. In the meantime, there was a simple contract created by the letter of intent which merely provided that such work as was carried out in conformity with the work items of the specification and drawings would be reimbursed on a reasonable expenditure basis.

Further guidance on this issue was provided by the Court of appeal in their judgment in *Harvey Shopfitters Ltd v ADI Ltd* [2004] 2 ALL ER 982. A letter was issued by ADI’s architect and confirmed ADI’s intention to “enter into a contract with [Harvey] on the basis of the tender sum of £339,895.34”. The letter also confirmed that the main documents were being prepared for signature and would be in the form of the JCT Intermediate Form of Building Contract 1994 (IFC 98) Edition and that “*if ... the [IFC 98] should fail to proceed and be formalised, then any reasonable expenditure incurred by you in connection with the above will be reimbursed on a quantum meruit basis.*” Harvey, as requested, returned the letter confirming its agreement to the terms of the letter.

When dispute arose, ADI contended that the contract was on the IFC 98 conditions whereas Harvey argued that it was a “simple” contract. The Court of Appeal held that the quantum meruit principle would only apply if the IFC 98 both “*failed to proceed*” and “*failed to materialise*”.



It is all too common for works to be commenced following the issue of a letter of intent, and therefore it is vitally important that full consideration be given to the terms stated within any such letter so as to determine whether or not a contract is to be entered into.

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