

Service issues - Formalities requires for the service of adjudication proceedings in Lobo v Corich [2017] EWHC 1438 TCC

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Executive summary

This case concerns the service of notices under a building contract and in relation to adjudication proceedings. The Court made clear that in relation to an adjudication all that was required was service "by any effective means". That does not mean that the detailed requirements of the Civil Procedure Rules must be complied with.

The facts

Mr Lobo (the "Employer") contracted with Mr Corich (the "Contractor") in 2010 to carry out certain building works. The contract was the JTC Intermediate Building Contract Revision 2 2009. Clause 1.7.1 of which required any notice or other communication to be in writing. Clause, 1.7.2 provided that any such notice or other communication should be sent, or transmitted by electronic means, as agreed in writing. Clause 8.4 provided for the giving of notice where a party was in default of its obligations under the contract. When that default continued for 14 days following receipt of that notice the Employer could terminate the Contractor's employment. A process was then set out in clause 8.7.4 for the ascertainment of any sums due from or to the Contractor. The Contractor's address for service given in the contract was 7 Gunter Grove.

Following issues on site the Employer issued a letter alleging that the Contractor was in breach of contract. In his response to that notice the Contractor asked that all future correspondence should be sent by email as well as hard copy to enable a prompt response. Following continued default, the Employer issued a notice terminating the contract on 14 April 2014, and indicating that he would be employing others to complete the works and would prepare a final account in due course.

It appears that the Employer wanted to be absolutely sure that the notice was properly served, and as a result the notice of termination was sent to the address for service given in the contract and a number of other addresses connected to the Contractor. The termination notice was subsequently sent by email to the Contractor as well. When the certificate pursuant to clause 8.7.4 of the Contract was produced, it showed a balance due to the Employer from the Contractor.

An adjudication was then commenced in September 2016 by the Employer. The Adjudication Notice was served on a number of addresses including the address given in the Contract together with four email addresses which the Employer had for the Contractor. The Contractor did not participate in the adjudication. The Adjudicator's Decision was also sent to these addresses. When the Contractor failed to pay the amount awarded, the Employer commenced enforcement proceedings in the TCC. Those proceedings, and ultimate Summary Judgment Order, were sent to the four postal and four email addresses in early 2017. However, it was the Contractor's case that he only became aware of the issue when he was notified by another mortgagee interested in his property 25 Gunter Road that a charging order had been made on that property.

Decision

The Employer applied for the interim charging order to be continued. The Contractor commenced proceedings to set aside the Adjudicator's Decision and that the charging order against 25 Gunter Road be set aside. The Contractor made his application on the basis that the Adjudicator's Decision was reached in breach of the principles of natural justice as the Contractor had never been aware of any aspect of the adjudication and had played no part in it.

Perhaps unsurprisingly, given the extensive efforts made by the Employer to ensure that service of the documents was effected on the Contractor, the Judge found that the service of the notices by delivery to the postal addresses had been effective in order to comply with clause 1.7.2. The Judge went on to say that the fact that the correspondence was copied to the Contractor by email would have been sufficient to comply with clause 1.7.2 and to constitute effective service under the Housing Grants, Construction and Regeneration Act 1996 (the "Construction Act").

Comment

Adjudication Notices and Referral Notices do not fall within clause 1.7.4 of the JCT and there is no express contractual requirement relating to them. All that is required pursuant to the Construction Act is that they be served "by any effective means". This does not incorporate the requirements of the Civil Procedure Rules which govern Court proceedings, and where

detailed requirements for service are laid down. The Court noted that effective service does not of itself mean that the party to be served must come to know of the adjudication. If the Notice or other document is delivered to the addressee's last known principal residence it will be treated as effectively served.

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