

Damages for wrongful termination

Published 23 August 2018

Summary

This case highlights the difficulties but also the considerations which should be taken into account when terminating another party.

Facts

Redbourn were appointed by Fairgate as development manager and project manager on a proposed residential development in Wembley, London. Fairgate wrongfully terminated Redbourn's appointment based on an alleged material breach of the agreement. The latter disputed the breach and subsequently commenced proceedings, in which it was successful. Redbourn therefore claimed that it was entitled to all fees it would have earned, if the development agreement had not been terminated.

The fee structure under the development agreement had consisted of a fixed fee split into two tranches: first, a sum of £200,00 payable monthly during the initial design period (such tranche was not contended by Fairgate); and, secondly, a sum of £200,000, which was payable upon obtaining full planning consent, and 2% of the estimated build cost that would have earned managing construction. Additionally, Redbourn claimed a further performance fee of £250,000, had the project been completed on time and on budget.

Fairgate denied that it was liable for the second tranche and additional fees.

Decision

The court concluded that Redbourn were not entitled to the second tranche and additional fees for the wrongful termination of its appointment, based on the following grounds:

1. Under the terms of the agreement, Fairgate had the right to abandon the planning application process, if it became apparent that the project was not financially viable or was not a realistic project to pursue in view of the land ownership issue.
2. Furthermore, Fairgate were not under an unqualified obligation to complete the project, especially if the envisaged project was unrealistic. Otherwise, Fairgate would find itself tied up to a strangely uncommercial arrangement, by which Redbourn would have the opportunity of earning its full fees.

Lessons

This case highlights the need to consider, in a wrongful termination claim, whether the defendant might have been able to lawfully terminate the contract in any event at a later stage, and identify the extent of their contractual obligations. Otherwise this may defeat a claim for fees which the other party was expecting to earn for services it had agreed to perform.

The parties should consider the importance of including clearly defined provisions to terminate a contract when the other party defaults and ensuring that great care is taken to record the true agreement of the parties. The parties should clearly set out their liabilities at all of the stages of the project, and even consider an agreed period of time in which to rectify a breach.

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