

Successful use of manifest injustice to resist enforcement of an adjudicator's decision

Published 21 December 2020

This is a useful case, which illustrates, potentially a further way to resist enforcement.

Facts

JRT Developments Ltd v TW Dixon (Developments) Ltd [2020] concerned an application for Summary Judgment to enforce an adjudicator's decision in the sum of £952,579 and a cross application by TWD for a stay of execution pursuant to CPR 83.7(4).

The Summary Judgment application was not opposed. The Court had to deal with TWD's application for a stay of execution of the Judgment.

TWD sought a stay of execution on the basis that it had issued part 7 proceedings against JRT seeking (i) a declaration that the payment notice which was the subject of the adjudication was invalid; and (ii) a determination that JRT had actually been overpaid and in fact sums of between £300,000 to £1,500,000 were due to be repaid by JRT to TWD.

In light of the above, TWD sought a stay of execution of the Judgment until the trial of its claim against JRT pursuant to the "special circumstances" permitted under CPR 83.7(4). The grounds relied on were (i) JRT's probable inability to repay the judgment sum following trial of TWD's claim, and (ii) the ground that TWD was unable to pay the award and, if a stay was not granted, it would suffer manifest injustice.

Factual issues

The parties involved are limited companies, but in fact, there are much closer ties between the two than the title of the case would suggest.

JRT is a company owned and controlled by Mr Jonathan Woodcock, a quantity surveyor. TWD is a company that was set up for the purpose of carrying out the development of 14 houses and is owned and controlled by Mr and Mrs Dixon. Mrs Dixon is Mr Woodcock's aunt.

The parties discussed developing some farmland by building houses on it. Mr and Mrs Dixon transferred the land to TWD and then engaged Mr Woodcock's business, JRT, to construct the development. Mr Woodcock's business had some previous experience, but this was its first major development. Mr and Mrs Dixon, on the other hand, had no previous involvement in the construction industry.

The dealings between the parties were informal and the judge commented that the relationship appeared to more like that of a joint venture, rather than of employer and contractor in an arm's length construction contract.

The parties did not operate the payment procedure in the contract during the three year course of the project, instead Mr Woodcock dealt directly with the funder for development, providing the detail that the funder's QS required for its valuations. JRT would then issue an invoice in the amount approved by the funder and TWD would pay the invoice from the sums released by the funder. At no point did JRT issue a payment notice under the terms of the contract or an invoice for any sum exceeding the amount approved by the funder.

Relations then soured and the contract was terminated in June 2019, with both parties alleging repudiatory breach. Following termination, JRT issued a payment application in the sum of £952,578.97. This payment application was followed by a payment notice in default in September 2019. TWD did not understand the significance of the payment notice in default and did not serve a payless notice. JRT then referred the dispute to adjudication, in which it was successful, receiving an award for the £952,578.97 claimed in its payment application.

Decision

The judge considered the two grounds relied upon by TWD as follows:

1. JRT's probable inability to repay the judgment sum following trial of TWD's claim.

Having reviewed the evidence in light of the relevant case law, and in particular, the principles in *Wimbledon v Vago*^[1], the

court held that these principles were satisfied. JRT was unlikely to be able to repay the judgment sum following trial; the financial position of JRT was significantly different to when TWD originally contracted with them; and JRT's financial position was not caused by TWD's failure to pay the adjudicator's award.

2. TWD's inability to pay the award and that it would suffer manifest injustice if required to do so.

The court found that TWD could not pay the judgment sum and would be forced into liquidation if it were required to do so. In the circumstances, if the claim was not stayed, TWD would be deprived of the opportunity to seek redress through its part 7 claim. Coupled with this, the court found there was a set of exceptional circumstances and in light of those circumstances it would be manifestly unjust if the judgment was not stayed.

Comment

As this case illustrates, although it opens a further avenue to resist enforcement, the facts have to be exceptional and not in the usual course of things. A key factor appears to have been the relationship between JRT and TWD and in particular, that it was not one of an employer and contractor operating at arm's length. The directors and shareholders of the companies were family members who were dealing with each other informally and in a way consistent with a joint venture arrangement.

Another factor which the court considered held some weight is the way JRT went about obtaining the adjudicator's decision; essentially it went for a "smash & grab" adjudication relying on a default payment notice having never issued a payment application to TWD previously in the three years of the project.

Whilst the court did not seek pre-judge TWD's part 7 proceedings, there were a number of facts which demonstrated that the sums claimed by JRT in its payment application could not be supported and that it was a likely a re-payment would be due to TWD following trial. It was only in light of these exceptional circumstances that the court could conclude that to refuse the stay of execution would be manifestly unjust.

[1] *Wimbledon Construction Company 200 Ltd v Vago* [2005] EWHC 1086 (TCC)

Authors



Harriet Hawkins

London - Walbrook

020 7894 6106

hhawkins@dacbeachcroft.com



Mark Roach

London - Walbrook

+44 (0)20 7894 6314

mroach@dacbeachcroft.com