

THE IMPORTANCE OF PAYMENT NOTICES POST TERMINATION OF CONSTRUCTION CONTRACTS

- ▶ The recent decision of *Adam Architecture Ltd v Halsbury Homes Ltd* [2017] EWCA Civ 1735, [2017] All ER (D) 91 (Nov) in the Court of Appeal highlights the importance of employers submitting the appropriate notices in response to any payment applications that are submitted post termination of a construction contract.
- ▶ It confirmed that post termination payment applications and final accounts will be treated in the same way as interim applications and that a pay less notice must therefore be submitted if a party wishes to pay less than the amount claimed in the payment application.
- ▶ This decision is particularly important in light of the recent collapse of Carillion and parties should bear their contractual obligations in mind when considering payment upon termination.

What is it about?

In October 2015, Adam Architecture Ltd (**Adam**) was appointed by Halsbury Homes Ltd (**Halsbury**) to carry out design works under the RIBA Conditions of Appointment for an Architect.

After a few months of work, Adam was informed by Halsbury that it would be proceeding with an alternative architect on the project. Following this, Adam responded advising that it would not carry out any further work and submitted an invoice for work done to date.

Halsbury did not pay this invoice and also failed to submit a pay less notice. Adam subsequently commenced an adjudication for the sums due to it for work carried out up to the date of termination of its employment. The adjudicator found in favour of Adam as a result of Halsbury's failure to submit a pay less notice.

Further proceedings were commenced in the Technology and Construction Court and, deciding not to enforce the adjudicator's decision, the court found in favour of Halsbury, ruling that it was not required to submit a pay less notice as the invoice was a termination account pursuant to clause 5.17 of the RIBA Conditions.

Adam appealed and the principal issue put before the Court of Appeal was whether Section 111 of the Housing Grants, Construction and Regeneration Act 1996 (**Act**), which imposes an obligation on the payer to pay the "notified sum" on or before the final date for payment, applies only to interim payments or whether it also applies to payments due following completion of the works or termination of the contract.

Why does it matter?

The Court of Appeal held that Adam had accepted Halsbury's communication as termination of its employment without notice and had submitted an invoice for work done up to the date of termination in response.

Therefore, if Halsbury wished to avoid paying Adam's termination account in full, then it was required to submit a pay less notice as per its obligations under the Act.

The Court of Appeal drew particular distinction from the fact that Adam had been "scrupulous" in respect of the sums due for the work actually carried out and that the application for payment was not for damages due to breach of contract. However, given the serious consequences of failing to submit the appropriate notices, employers should err on the side of caution and submit pay less notices in response to all payment applications received.

Now what?

Employers should bear in mind that, if a contractor has entered into insolvency proceedings, liquidators/administrators may continue to submit payment applications on the chance that a pay less notice might be missed and the sums claimed become prima facie payable by the employer.

Employers should therefore pay particular attention to any payment applications submitted by contractors, even if its contractor has entered insolvency proceedings.

Although this decision relates specifically to the RIBA Conditions, for good order, even where contracts state that no further sums shall be due on termination (JCT contracts for example), employers should issue a pay less notice in response to any payment applications received from its contractors.

Who to contact?



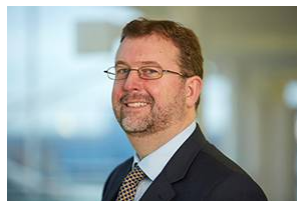
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