

Neutral Citation Number: [2006] EWHC 535 (TCC)

Case No: HT-05-337

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/03/2006

Before :

HIS HONOUR JUDGE COULSON QC

Between :

HARLOW & MILNER LTD
- and -
TEASDALE

Claimant

Defendant

(No. 2)

Transcript of the Court's recording by:
Sorene Court Reporting & Training Services
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MS ELIZABETH REPPER (instructed by **Cobetts, Manchester**) for the Claimant
The Defendant did not attend and was not represented

Hearing dates: 15th March 2006

Judgment

JUDGE PETER COULSON QC : :

1. This is an application by the Claimant, Harlow & Milner Ltd, to make Final the Interim Charging Order dated 20 February. The application arises out of a construction adjudication between these parties. The Defendant lost the adjudication. A sum of about £90,000 was awarded in favour of the Claimant pursuant to the adjudicator's decision, made as long ago as 19 May 2005. The Defendant failed to pay this sum and the Claimant, after commencing separate bankruptcy proceedings, finally sought to use the TCC procedure specially tailored to deal with adjudication enforcement.
2. On the 16th January 2006, I enforced the adjudicator's decision in favour of the Claimant and gave judgment in a sum (including interest and the like) of just less than £100,000. Regrettably, the Defendant failed to pay that judgment sum. Accordingly, in February, the Claimant made an application for an Interim Charging Order. The application was sent to my Clerk on the 15th February and was put before me on the 20th February. I made an Interim Order, and that Interim Charging Order was sealed and sent out that day by the TCC Registry.
3. The following day, the 21st February, my Clerk noted that, as a result of an error on the face of the Order drawn up by the TCC Registry, the property to which the charge was to attach had not been expressly identified. He saw to it that that error was corrected, but this meant that the amended version of the Interim Order was not provided to the Claimant's solicitors until the 23rd February. The following day, Friday 24th February, they served the Interim Order, in its corrected form, which contained notice of today's hearing. The documents were served after 4:30 p.m. and so the deemed date of service was Monday the 27th February.

4. The Defendant does not appear and is not represented today. However, from a careful perusal of the Defendant's solicitors' recent letters, it appears to me that they take two points. The first is a point concerned with time. They say that, pursuant to CPR 73.5, they were entitled to a period of 21 days' notice prior to today's hearing. They say that that period was reduced by three working days because of the failure to serve the Interim Order until the 27th February. Accordingly, they say that the Order should not be made Final today because they have been deprived of those three working days' notice. Their second point is a point on the merits. They contend that the Interim Charging Order should not be made Final because there is now an on-going construction arbitration between the parties. They therefore say that the present application in respect of a Final Charging Order should either not be allowed at all, or should in some way be suspended until the resolution of that arbitration.
5. I deal with this purported merits point first. It seems to me that this argument, as set out in the Defendant's solicitors' letter of the 14th March 2006, is quite hopeless. It is a wholly insufficient ground, under CPR 73.8, on which to oppose a Final Charging Order. What the Defendant (and her solicitors) continue to fail to appreciate is that the adjudication process is designed to give rise to a prompt (albeit temporary) result, with which the parties are obliged to comply in full: see the Housing Grants, Constuction and Regeneration Act 1996, and the string of decisions by the Court of Appeal in which they have made plain that Adjudicators' decisions are to be peremptorily enforced, starting with Macob Civil Engineering v Morrison Construction [1999] BLR 93 and Bouygues (UK) v Dahl-Jensen (UK) [2000] BLR 522. In this case the Defendant was ordered by the adjudicator 9 months ago to pay to the Claimant a sum of about £90,000. The Defendant, in breach of her contractual obligations, continues to refuse to do that, despite the judgment of this court of 16.1.06 which expressly required her to pay the sum awarded by the adjudicator.
6. The Defendant is not entitled to ignore the judgment of this court and to delay her payment to the Claimant in the hope that 'something may turn up'. Her solicitor's suggestion that the Charging Order should in some way be suspended, until the result of the arbitration is known, would wholly undermine the adjudication process. If it were right, it would mean that any party who was on the receiving end of an adjudicator's decision could, if they wanted to avoid the result, commence arbitration proceedings against the successful party, and then argue that the adjudicator's decision should abide the eventual outcome of that arbitration. It was precisely to avoid such delaying tactics that the statutory adjudication process was created in the first place.
7. For those reasons, therefore, I have no doubt that the point put forward by the Defendant's solicitor, as an alleged merits point, is nothing of the kind. There is, therefore, no evidence to allow me to conclude that the Interim Charging Order should not be made Final.
8. That then brings me to the timing issue. There is no doubt that, as Ms Repper properly concedes, the Claimant needs to make a retrospective application for the abridgement of time so that the Claimant's service of the Interim Order on 27 February can be deemed to be effective, even though that was less than the period of 21 days before the final hearing, referred to in CPR 73.5.
9. There is nothing in CPR 73.5 to suggest that the Court cannot, in appropriate circumstances, abridge that 21 day period in accordance with the wide powers set out in CPR 3.1(2). Ms Repper invites me to abridge time, in accordance with that provision, and she relied on three separate factors in urging me to follow that course. She contends, first, that to do so would be in accordance with the overriding objective; secondly, that service was only three working days late and the order was served as soon as reasonably practicable in all the circumstances; thirdly, and perhaps most important of all, she makes the point that, given that there is no written evidence provided in accordance with CPR 73.8(1) from the Defendant, and that the only argument raised in the correspondence is the point I have

already dismissed, there is no possible reason why the Court should not abridge time so as to make the Interim Order Final today.

10. It seems to me that Ms Repper's submissions are correct and that that is the course that I should adopt.
11. I have particular regard to three points. The first is that, for the reasons which I have explained, the Defendant has no proper ground on the facts for opposing the application to make the Interim Order Final. The Defendant has plainly had time to consider whether there is any reason why I should not make a Final Order, and the point raised in her solicitor's letter of 14 March is the only argument that she, or they, have been able to identify. For the reasons I have given, I consider that argument to be without merit. Therefore, it seems to me that, since I have considered and rejected on the merits the only argument put forward by the Defendant, it would be wrong for me not to go on and make the Charging Order Final. It would be unduly wasteful of time, effort and expense not to make the Final Order today.
12. Secondly, I note that, in any event, there is no evidence in opposition from the Defendant pursuant to CPR 73.8(1). That evidence should have been served 7 days before today. Even if the Defendant was entitled to an adjournment of today's hearing until 21 days after service, which would take us to Monday 20 March, the Defendant would still be out of time to put in evidence to oppose the application. I take that factor into account in concluding that any adjournment would simply lead to wasted costs, and not affect the result at all.
13. Finally, pursuant to the overriding objective, I have a Case Management power to abridge time, if I consider that the point taken by the Defendant as to the time for service is a purely technical point, which has caused no prejudice to the Defendant at all. Of course, a Court should always be careful before coming to such a conclusion. However, in this case, there is a complete absence of any evidence of prejudice caused as a result of the shorter notice period, either identified by the Defendant's solicitors in correspondence, or elsewhere. Thus I conclude that this is a purely technical point, which has had no detrimental effect on the Defendant, so that the retrospective abridgement of time should be allowed. I should not allow this point to interfere with the proper administration of justice. The overriding objective requires that the Interim Charging Order is made a Final Order today, and that is the order that I make.
14. For those reasons, therefore, I order that the Interim Charging Order that I made on 20 February, as amended and returned to the Claimant's solicitors on 23 February, should now be made Final.