



Payment Notices:

Without clear guidance from the Court as to what should or should not be stated, in grey area cases, what tips the balance between a valid and an invalid payment notice?

DAVID SEARS QC

Recent Authorities:

Caledonian Modular v Mar City Developments [2015] EWHC 1855 (TCC) Coulson J

Held: Neither the contractor's email of 13 February 2015 nor the three documents enclosed with it stated that they were a new application for an interim payment. The documents said that they were a "final account application summary" and an "updated account". The invoice of 19 March did not say that it was in some way a default payment notice or that the payee's notice had originally been provided on 13 February. Thus, on the evidence, the 13 February documents were not an application for an interim payment or a valid payee's notice.

Henia Investments v Beck Interiors [2015] BLR 704 Akenhead J

Held: The terms should be seen in the context of the purposes of the amended 1996 Act, which included the need to encourage cash flow to contractors and to set up a means of quick adjudication of interim payment disputes. The interim application should be free from ambiguity if there were to be serious consequences flowing from it. There was at the very least substantial room for confusion.

Jawaby Property Investment Ltd v (1) Interiors Group Ltd (2) Andrew Black
[2016] EWHC 557 (TCC)
Carr J

Held: The valuation did not comply with the provisions of the contract. It did not state what the contractor considered to be due to it. It was an initial assessment only. There was no, nor could there be any, suggestion that a mere statement by a contractor of what it considered might be due to it would be sufficient for the purposes of the contract. The reasonable recipient of the valuation would not have regarded it as unambiguously informing him that this was an interim application for the purpose of the contract.

Kersfield Developments (Bridge Road) Ltd v Bray and Slaughter Ltd
[2017] EWHC 15 (TCC)
O'Farrell J

Held: The contract did not expressly provide that applications were not valid in the absence of supporting information. There was no basis for implying such a term as that would introduce uncertainty into the payment process. Deficiency in substantiation of a claim might justify rejection of the claim in part or full, but it did not render the application itself invalid (see paras 34-36 of judgment).

Surrey & Sussex Healthcare NHS Trust v Logan Construction (South East) Ltd (2017)
[2017] EWHC 17 (TCC)
Alexander Nissen QC

Held:

(1) The attachment was called an "interim payment notice" and had made reference to the relevant contractual provision, although that was not a prerequisite. The supporting information contained a detailed assessment of the sum alleged to be due to the contractor. The notice and supporting information described a valuation date of 24 August which was consistent with its contractual entitlement. It was significant that the trust had described it as an interim payment notice in its subsequent email, so there could be no question that the trust could not read what it said. Viewed on its face, the notice was clear and free from ambiguity.

(2) A pay less notice did not have to be entitled "pay less notice" or make specific reference to a contractual provision relating to pay less notices in order to be valid. The question was whether, viewed objectively, the notice had the requisite intention to fulfil that function.