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***Meadway Private Clients (Liongate) Ltd v Wildacre Ltd***

***Queen's Bench Division (Technology & Construction Court)***

***17 January 2018***

Case Analysis

Where Reported  
unreported;

Case Digest

Subject: Civil procedure Other related subjects: Construction law

Keywords: Adjudication; Cross-undertakings; Freezing injunctions

Summary: The court continued a freezing injunction against the employer under a building contract, but reduced the amount and required the cross-undertaking given by the contractor to be fortified.

Abstract: The applicant sought the continuation of a freezing injunction and the respondent applied for it to be discharged.

The applicant was a contractor which had been engaged by the respondent Jersey company to refurbish a hotel. The project had been funded by an investor who had withdrawn, leading to payment difficulties on the part of the respondent. At the end of 2017 two interim payment applications went unpaid and the applicant applied for an injunction to freeze the respondent's assets up to £4 million. The judge made an order freezing £500,000 and the applicant gave an undertaking to issue and serve a claim form. The return date was extended for the parties to attempt mediation, which failed. In the meantime the applicant proceeded with an adjudication in respect of the interim applications and obtained a decision in its favour for £176,000 which had been paid.

The respondent argued that the injunction should be discharged because the applicant had not complied with its undertaking to issue and serve a claim form; the injunction had expired because the agreed return date had been in the vacation and the matter had had to be re-listed; there was no evidence of likely dissipation; if the injunction was continued the applicant's cross-undertaking in damages should be fortified.

Held: Judgment accordingly.

Failure to issue and serve claim form - The failure to comply with the undertaking given to the court when the freezing injunction was made was the most serious issue. However, in the meantime the applicant had got on with an adjudication in respect of the interim payment application and had succeeded. In the circumstances it would be unfair to discharge the injunction on that ground. The

applicant, as part of the order continuing the injunction, would be required to issue and serve a claim form relating to the final account within a matter of days.

Expiration of injunction - It would be a brave legal adviser who told his client that he was no longer subject to an injunction on the basis that a return date in the vacation had been relisted. The respondent sought to rely on the fact that no dissipation had taken place in the 10 days or so between the agreed return date and the re-listed date. That was fortunate because it meant that the court did not have to decide what the consequences were if there had been any dissipation. The issue was minor and technical and did not affect the decision to continue the injunction.

Financial position of respondent - As a Jersey company there was little or no financial information available. The true position was unclear and it would be unsafe to conclude that the respondent's financial position was not precarious, and had changed significantly since the order was made.

Fortification of cross-undertaking - The instant case was exactly the kind of case in which the cross-undertaking in damages should be fortified. That was the corollary of the fact that an impecunious claimant should not be denied an interim injunction if it was otherwise justified. The injunction would be continued in the sum of £350,000 representing the amount of the final account claim. The respondent would be required to issue a claim form and commence an adjudication on the final account dispute and pay £50,000 into court to fortify the cross-undertaking.

Judge: Fraser J

Counsel: For the applicant: Hannah McCarthy. For the respondent: Luke Wygas.

Solicitor: For the applicant: Palmers Solicitors (Basildon). For the respondent: Karam, Missick & Traube LLP.

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