The dangers of oral contracts...

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Summary

In Rob Purton t/a Richwood Interiors v Kilker Projects Limited [2015] the courts reviewed the principles of contract formation, and looked at the difficulties which can ensue when parties enter into an oral contract.

Mr Purton, applied to enforce an adjudicator’s decision following a dispute which arose out of works carried out by Mr Purton for Kilker at the Dorchester Hotel.

Mr Purton alleged that he entered into an oral contract with Kilker on or around 9 June. The contract was varied in value, quantity and quality. Kilker resisted enforcement on the grounds that no such contract existed and, even if it did exist, it was not the same contract that was referred to adjudication, and accordingly the adjudicator lacked jurisdiction and his decision was of no effect.

The court held in favour of Purton, finding that a contract was in existence. In particular:

• Contract formation: Where substantial works had already been carried out, this was not conclusive evidence that the parties had entered into a contract, but it was certainly a relevant factor pointing towards the existence of a contract. In the present case, “it was clear beyond argument” that a contract was in existence. It was unrealistic to suggest that the parties had not intended to create legal relations.
Adjudicator had jurisdiction to decide dispute: The Court rejected the argument that, even if a contract existed, it was not the contract that had been referred to adjudication and so the adjudicator lacked jurisdiction. Pursuant to the Construction Act, as amended, all parties to a construction contract, whether or not made in writing, have a right to refer a dispute to adjudication at any time. It followed that the adjudicator had jurisdiction to decide a dispute between the parties. Whether or not a contract existed on the terms pleaded by the referring party in its adjudication notice and referral was irrelevant both as a matter of principle and pragmatism (per Akenhead J in *Nickleby FM Ltd v Somerfield Stores Ltd* [2010]).

Note that all contracts, written and oral are now subject to adjudication. The court has shown its willingness to be robust in enforcing adjudicators’ decisions, regardless of the exact terms of the contract.

Oral contracts may appear to save time and money at the start of a project, but in this case the parties could have avoided a court case (and all the ensuing time, money and stress) by recording the terms of their agreement in writing.

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