

DEAL OR NO DEAL? ANOTHER LESSON IN ENSURING YOUR CONTRACT IS CLEARLY SET UP

The recent English case of *Williams Tarr Construction Limited v Anthony Roylance Limited and Anthony Roylance* [2018] EWHC 23 highlights the importance of taking time at the commencement of a project to set out the basis on which parties intend to contract with each other.

WTC was the main contractor on a housing development in Cheshire. The works included the construction of a retaining wall to the south of the site, the original intention had been that the wall would be a blockwork wall but this was subsequently revised to stone-filled gabion baskets. During the course of the works unexpected ground conditions were encountered which caused problems with the retaining wall.

WTC engaged either Anthony Roylance Limited or Anthony Roylance in his individual capacity to either design a solution so that the retaining wall would be fit for purpose or to design a drain to assist with water inflow problems so that the rear of the retaining wall could be accessed.

And therein lies the rub.

WTC believed that it had engaged Mr Roylance in his capacity as an individual to design a solution to the problems with the wall so that the wall would be fit for purpose.

Mr Roylance for his part disagreed with this analysis, WTC had contracted with his limited company on a far more limited scope to design a drain for the wall, he had not designed the

wall, he had not taken on the obligation to ensure that the wall would be fit for purpose.

The court found that each party had become fixed in their view and were unable or unwilling to accept that matters may have been more complex than their own view.

In addition Mr Roylance had produced design drawings in about 2010. When problems first came to light it was thought to be as a result of errors in workmanship rather than design. This avenue was pursued for some time with the subcontractor who constructed the wall and it was not until almost six years after the original discussions took place regarding the design of the wall that a claim was intimated. Due to the passage of time and the fact that the matter had been put out of everyone's heads for a significant period the court found the witness evidence, although honestly given, to be of little assistance.

Therefore the task for the court was to consider each piece of correspondence between the parties to determine what had been agreed and between whom. The documents were often unclear, for example a design had been produced for the retaining wall by Mr Roylance, Mr Roylance claimed this was an "as-built" drawing produced simply as a record of what was already on site, WTC claimed that there were additional details on that drawing added by Mr Roylance in an attempt to resolve the difficulties with the wall.

As to the parties to the contract WTC said that the bulk of the documentation pointed to Mr Roylance acting in his personal capacity, he did not use headed notepaper or refer to his limited company in his communications. Mr Roylance stated that payments were processed through the limited company and that a draft collateral warranty produced by WTC had referred to Mr Roylance's company number.



The Court's Decision

The court found that whilst the position was far from clear, it was possible that WTC did believe that the scope of the appointment was much wider but found on balance that this was not the case and that, viewing the documentation on a whole the design of the wall had been produced by the supplier of the gabion baskets and that the scope of the appointment was limited to the additional drain. The court accepted that Mr Roylance had considered himself to be operating through his limited company but that that had not been sufficiently communicated to WTC and that on balance the contract was between WTC and Mr Roylance in his personal capacity.

Key Points

WTC and Mr Roylance failed to put in place any clear agreement identifying the parties to the

contract or what the scope of the appointment was to be. As a result neither party achieved a satisfactory result.

Although Mr Roylance was able to convince the court that the scope of his works was limited and therefore avoid liability for the failures in the wall, he did leave himself personally exposed in circumstances where he had set up a limited company to protect against precisely that. The court said that WTC probably believed that Mr Roylance's appointment was wider than it actually was; their failure to record that resulted in them being unable to recover losses for the failure of the wall.

The main lesson arising from this case is the importance of setting out at the outset, the basis on which you are contracting or you may find that what you understood to be the deal is not the case at all.

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