



Withholding Monies

A recent Court ruling has thrown further light on the issue of when an employer under a Building Contract can withhold payment of monies otherwise due to a contractor. Section 111 of the Construction Act provides that a party to a construction contract may not withhold payment after a final date for payment unless it has given an effective withholding notice.

Judgment was recently handed down in the case of Reinwood Limited v L Brown & Sons Limited. In this case the employer had provided a withholding notice under a JCT contract deducting £61,000.00 of Liquidated Damages from an amount certified by the architect. The employer then paid the balance of £126,000.00 before the final date for payment. Just after payment but before the final date for payment, the architect extended the date for completion with the result that only a total of £12,000.00 liquidated damages was due to the employer rather than the £61,000.00 deducted.

The following day the contractor asked the employer to pay the £49,000.00 difference between the liquidated and ascertained damages which had been withheld and the lower sum now due to the employer for liquidated and ascertained damages. The employer paid the £49,000.00 a few days later after the contractor had issued a default notice. However, the contractor still purported to

terminate the contract on a number of grounds, one of which included that the employer had wrongfully withheld the £49,000.00 liquidated damages for the period prior to its payment.

The House of Lords found that the employer was entitled to act as it did, and was not in default. A



Stephen Homer

supervening event may have undermined the factual basis for claiming liquidated damages but it did not remove the legal basis for the employer's claim. The contract envisaged any adjustment to the parties' financial rights being picked up in later certificates.

The decision emphasises that one of the purposes of the payment provisions of the Construction Act is to enable the parties to know where they stand financially. If the contract provides an adequate mechanism for certification, withholding and payment (and the mechanism complies with the Act) the parties can be confident in following the payment requirements, but contract administrators need to consider carefully whether to grant extensions of time just prior to a final date for payment.

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These articles are for general information only and do not constitute legal advice. For specific advice on contract law you should always consult a specialist lawyer.

Crackdown on illegal workers

As part of the crackdown on illegal workers, radical changes were implemented at the end of February 2008 with the introduction of "civil penalties" and in addition a new "points system" for immigration which is scheduled to take effect later on this year.

The Government has introduced new measures to prevent and deter illegal working in the form of "civil penalties". Employers who negligently hire illegal workers could face a penalty of up to £10,000 for each illegal worker employed by their business. If an employer has knowingly hired an illegal worker they risk facing an unlimited fine or being sent to prison!

In addition to civil penalties, a new points based system will also be introduced. Each tier will have different conditions, entitlements and entry clearance checks. Applicants will need to show that they have sufficient points in order to gain entry clearance or leave to remain in the UK for each tier. Points will be awarded according to objective criteria, for example age, qualifications and salary.

Under the new point based systems, employers who wish to sponsor migrants for visa applications will require a licence.

It is important that all employers are aware of their duties under the new provisions and tread carefully to ensure that they do not find themselves facing a fine or worse.



Chloe Ricciardi

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GLOOM WITH A VIEW

In April 1997 the Chartered Institute of Purchasing and Supply started publishing a monthly index showing the value of purchases in construction: May/June 2008 showed the sharpest fall since the index started. In the month that saw the administrators called in at the Warwickshire construction firm Chase-Norton and Taylor Wimpey having trouble raising £500m of additional funding, it was not surprising to hear that Barratts were to announce job cuts of over 1000. It is not however, all doom and gloom – certainly the housing sector is in severe difficulties and with new home mortgages down by 40%, it is hardly surprising but it is just a few months ago that there was a ripple of panic in wondering

where the additional 50,000 tradesmen and tradeswomen were to be found to deliver the 2012 Olympics. As I write this, the commercial sector is still holding up reasonably and housing associations, providing much-needed affordable homes for key workers in towns and cities around the United Kingdom, are taking advantage of the lower initial capital required for their projects. The recent prediction in the US that the American and UK housing prices would continue to go down "perhaps over the next two years" has not however given any impetus for a recovery, we will need to continue to press for efficiencies, keep a tight rein on waste and hold our nerve.

Ed.

Don't forget the guide

Norwich Union Insurance has prepared a series of guides dealing with health and safety issues covering many trades. The guides can be printed off to form a reference document and for display on site. The series starts with the Risk Assessment – often considered just a necessary evil but a vital tool in making the site safer. Norwich Union risk advisors visited 3000 firms last year and found that whilst 635 had risk assessments that were 'good' or 'very good', 37% had 'poor' assessments, which required considerable improvement to get them up to standard.

As an illustration of the necessity for guides of this type, the HSE visited over 1000 building sites in one month last year and found that 395 of them were so poorly run that they served immediate enforcement notices to stop work. As members of the ICM it is imperative that we keep up to date with the relevant legislation and take all the necessary steps to ensure the safest possible working environment for those to whom we have a responsibility.

The guides can be viewed at www.nurs.co.uk – follow the link to "risk manager" for more in-depth information.

Ed.

FAIR'S FAIR

The Fair Payment Charter was launched last autumn and aims to assist all contractors and sub contractors in obtaining fair and reasonable payment for work completed. The charter rests on a few simple steps to ensure that all parties in the payment chain are fully aware.

1. When negotiating the contract, make sure that the main points of the charter are in the contract documents (30 day payment, BACS, relevant retentions). If they are not there, negotiate their inclusion before signing.
2. If you are appointed as a sub-contractor make sure that the principal contractor has signed up to the charter.
3. If you are the principal contractor, invite your sub-contractors and suppliers to sign up to the charter.
4. When once work starts, all parties should be aware that the requirements for payment must be met.

A great deal of information on the FPC and other matters relating to sub-contractors can be found on the web site of the National Specialist Contractors Council www.nsc.org.uk

The National Specialist Contractors Council was founded to:



- be the representative umbrella body for building specialist organisations
- promote the role of Specialist Contractors
- encourage the use of trade association members
- lobby for a business environment in which Specialist Contractors can flourish

Ed.

The Southern Region 48th Annual Dinner and Dance Royal Beach Hotel, Southsea Saturday 9th February 2008

As in previous years, guests started arriving on Friday morning to enable them to visit places such as the Spinnaker Tower, Gunwharf Quays, the Portsmouth Dockyard (HMS Victory, etc.), Port Solent Marina and the Southsea shopping centre, as well as strolling along the Southsea Promenade with the weather being nice and sunny.

On arrival for the dinner and dance the guests were welcomed in the lounge and following a drink or two were requested to take their places in the dining room to welcome-in the top table guests. The traditional "slow hand clap" greeted the guests. Rita Webb said grace. Following the wonderfully appetising meal, toasts were proposed and responded to.

Bouquets were presented to the top table ladies and one lady from each table won a posy.

A toast was proposed for the chief chef, Paul and the Conference & Banqueting Manager, Davina.

Dancing to our regular DJ Paul Northcott, then commenced only to be interrupted by the special and main raffle draws. Dancing continued until after midnight when the guests retired either to their rooms or to their carriages.

I gathered from many comments made, that all enjoyed our social function of the year and were invited to attend our 49th Annual Dinner & Dance on Saturday 7th February 2009 again at the splendid Royal Beach Hotel. Bearing in mind the Southern Region are now the only region to hold such an event, we sincerely trust we will get an excellent attendance.

*Eric Richards
(Toastmaster)*



From L-R: Gary Francis (Southern Region Chairman) and Denise Gillespie; Ian Rea (National President) and Claire; John and Glenis Berry (Distinguished guests); Eric Richards (Toastmaster)

THE NANO STATE

In common with the majority of extreme technical advances, nanotechnology has had a barrage of objection and predictions of doom since it became knowledge in the public domain. Nanotechnology is the science of extreme miniaturisation used to solve present technical problems and provide new opportunities which stretch credulity. One nanometre is a billionth of a metre and represents about 1/80,000 the diameter of human hair. It means that tubes are being manufactured which have a skin thickness of a single carbon atom (see illustration). Two uses of immediate interest to the construction industry are the now commonplace “self-cleaning” glass and a method of adding a “marker” to the cement matrix which can check and relay any deterioration in the poured structure. Self cleaning glass rather surprisingly uses titanium dioxide – an extremely effective “obliterator” used in paint coatings: when it is applied at “nano-scale” to the glass surface it becomes an invisible coating which can react with sunlight to lift dirt off of the surface and get it to run down uniformly, thus avoiding streaking. Still in the experimental stage is the introduction of nano-particles into the glass which will constantly monitor and revise the performance of the glass in-situ to allow the maximum of insolation (light and warmth coming in) and insulation at the same time – effectively a variable Eglass.

The main driver for nano research has to date been the electronics industry where vast sums are to be made by further miniaturisation but almost every sphere of manufacturing could in future be touched by this technology. As usual, with any new technology that seems to go “outside nature”, caution must be paramount before products are marketed, it is worth considering that the nano particles distributed in certain sun protection products are so small that they can pass through human skin with total ease. On another plane it is said that it would be possible to manufacture a rope light enough and strong enough to stretch from earth to the moon – that would take rock climbing to new levels.



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Diary dates

September 2008

- 9 Southern Region CPD lecture (*see below for details*)
Zinc as a Building Envelop – VM Zinc

October 2008

- 8 Southern Region CPD lecture (*see below for details*)
Fischer Fixings

November 2008

- 12 Southern Region CPD lecture (*see below for details*)
Transport for the Olympics 2012 – Ken Watts
FICConstM

December 2008

- 10 Southern Region CPD lecture (*see below for details*)
Wow! That's Aviation – Phil Holt

January 2009

- 14 Southern Region CPD lecture (*see below for details*)
Application of Approved Document Part F: Ventilation
(*see below for details*)

Note: all Southern Region lectures are CPD accredited and certificates will be issued. Food is made available following each lecture. The lectures are held at The Mountbatten Centre Alexandra Park Portsmouth 7.45pm for 8.00pm

VIEWPOINT is the newsletter of the Institute of Construction Management (ICM) and is for circulation to the members of the Institute. Articles or comments for inclusion are very welcome and in any form.

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Viewpoint

the someday supplement

In this article Keith Mousdale – an ex-member and officer of Southern Region: who emigrated to France – gives us an overview of French wines. He can be contacted via your editor.

The Mystery of French Wines



photograph © Stephanie Feather 08

Serious wine drinking started for me in the mid-70's when we spent a family holiday in France and discovered that very acceptable wine could be purchased at the nearest supermarket for less than 50p for a litre. In contrast with the high prices we were [and still are] paying in the UK, this was another part of heaven for me. The choices were quite extensive. However with my then limited understanding of the French language, it was very much a hit-and-miss event each time I purchased a wine until I could remember the labels and the flavours related to them.

Following these holidays in France I decided to take a greater interest in the subject of wine and, as is normal in Europe, one starts by

trying to understand the complexities of French wines, still used as the 'yardstick' by which others are judged or compared. After some years of buying and reading many books on the subject, enhanced by enjoying the liquid itself, I studied for three months at each of Highbury and Southdowns Colleges resulting in qualifications which could have launched me as a wine store manager – but they were unable to compete with my love for building !!!

My preference for wine has always been biased towards French wine which I usually chose when I lived in the UK but I also recognise that there are many great wines produced a world away from Europe and are readily available in the UK.

Wine drinking in UK has increased dramatically and this has been largely due to the great influence the supermarkets have in

using their massive buying power to bring down prices. Supermarkets also have a deep knowledge of what influences the shopper and one factor that is recognisable in British shoppers is their wish to relate to brand names and their timidity in trying new products. Over the years this has been demonstrated by the success of such brand names as Blue Nun and Black Tower [German Leibfraumilch], J.P.Chenet [a French country wine], Mateus Rose [a Portuguese pink wine], Piat d'Or [French table wine] Corrida [Spanish table wine] and not forgetting that bottle of rough Chianti in a basket, many of which ended as lampshades.

In the tough UK marketplace for wines, French wines are doing badly. Their overall sales have been dropping at a rate of 3-4% per year except for Côtes du Rhône which according to the last figures I have seen, had increased their sales in the UK by 13%. How so?

To find the answer to this question you have to recognise that there is a strong force within a large portion of the French to avoid using the English language. Therefore the wine drinkers who only speak English and those in other parts of the world where English is their second language, find it devilishly difficult to understand the labels on the bottles - not a good way of improving sales.

Those countries whose wine labels are in English have benefited at the expense of France, in particular Australia and South Africa, together with South American wines eg Chile and Argentina which have strong brand names on their labels and produce wines of exceptional quality,

usually displaying on the label the grape varieties used.

Whilst the French cannot be excused for failing to recognise the need to cater for the non-French speaking world which is potentially an enormous market, the puzzle of their labels still remains. The laws governing the production of wine are very strict through the entire sequence from growing the vines through to the bottle labelling, and in accordance with these rules, many areas of production are not permitted to name the grapes on the label and are permitted only to state its place of "birth" with other information that is not necessarily helpful to the average wine shopper. For example one of the most expensive and greatest wines of the Bordeaux region will only state on the label that it is from Chateau Petrus, its year of harvest and the name of the specific area in the Bordeaux region under which its production is controlled [Appellation Contrôlée] ie. Pomerol. For those who buy this particular wine, probably costing a four figure sum, this lack of detail will not be a problem but as these same rules apply to any simple red, rosé or white wine from this same region then the supermarket shopper will have to take a chance if he is buying his first bottle of Bordeaux wine. If the producers were able to indicate on their labels that the red Bordeaux contains some or all of the following, Merlot, Cabernet Sauvignon, and Malbec grape varieties which are well known and displayed on wines from Australia, Chile, and Argentina, then buyers might just find that they would like to try a "nice bottle of claret" [red Bordeaux] as an alternative to the over-powerful wines of the new world. This very problem exists in many other regions of France and it is unfortunately the 'conservative' law makers of the Appellation Contrôlée system who are to blame. They have not [or perhaps do not want to] recognised the changes in the wine world which have taken place beyond the shores of France in recent years, and to be able to compare the choices available on the

wine shelves, most buyers of wine now wish to be presented with more information than simply the name of the village in which it was produced.

As I have stated above, only one region of France has increased its wine sales in the UK and that is the Côtes du Rhône wine region. This has been achieved by a massive advertising campaign which has put their product name to the forefront such that it almost seen in the UK as a brand. Perhaps with a little more effort they could bring to the attention of the drinker that in parts of the Rhone valley the major grape is Syrah, known in Australia as Shiraz, highly thought of by lovers of Oz wines.

Will French wines be making a comeback? Yes, I think they will do so!

It is many years since George Dubœuf made us all aware of the wonderful wines of the Beaujolais region by his marketing flair which accompanies the high quality wines he markets or produces himself. He has assisted the inexperienced shopper by producing labels with a distinctive appearance so that even the better wines of the Beaujolais region which carry their individual village names eg Chiroubles, Regnie, Morgon, and do not mention Beaujolais, are still

recognisable as George Dubœuf, which is now a successful 'brand name' synonymous with quality.

Also the Côtes du Rhône region has more recently demonstrated to others in France what advertising can achieve together with the fact that from the southern part of the country, some absolutely stunning wines are being produced by very modern winemakers under the regional 'umbrella' of Vin de Pays d'Oc. Those wines which are prefixed by Vin de Pays... are less regulated and the winemaker is able to chose whether to state on the label the variety of grape as well as having more flexibility in choosing the grape or blend of grapes to use. With an eye towards the future, many vineyards of the Pays d'Oc region have been acquired by successful French companies such as George Dubœuf and Baron Rothschild as well as Australian enterprises, and these will not have invested in the future without the important use of advertising.

These are but some examples of what can be achieved and I have faith that a country, which in my opinion still produces some of the best wines of the world, will come out of the current malaise which has been of its own making.

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Compact specialist Bobcat is launching a cage attachment for mounting on the company's 12-17 metre telehandlers.

They claim it provides a number of unique features resulting in enhanced safety, increased productivity and excellent reliability and is made of steel instead of aluminium offering additional structural stability.

It can be expanded quickly from a starting width of 2.4m to its full width of 4m in just 10 seconds.