

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY & CONSTRUCTION COURT (QBD)**

The Rolls Building
7 Rolls Buildings, Fetter Lane
London EC4A 1NL
Tuesday, 12 April 2022

B e f o r e :

Mr Justice Eyre

Between:

A & V BUILDING SOLUTION LIMITED **Claimant**

- and -

J & B HOPKINS LIMITED **Defendant**

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Unit 1 Blenheim Court,
Beaufort Business Park, Bristol, BS32 4NE
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(Official Shorthand Writers to the Court)**

**James Frampton (instructed by Hawkswell Klivington Solicitors) for the Claimant
Charles Edwards (instructed by way of Direct Access) for the Defendant**

**HTML VERSION OF JUDGMENT ON APPLICATION FOR RELIEF FROM SANCTION,
APPLICATION TO STRIKE OUT AND APPLICATION FOR ADJOURNMENT (APPROVED
TRANSCRIPT)**

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Mr Justice Eyre:

1. I have to address the principles in **Denton v TH White Limited [2014] EWCA Civ 906**. Serious though the breach is, because statements have to be in on time, I accept that there is an explanation given (again, not the most potent of explanations), but in the circumstances of the case as a whole it is appropriate to grant relief, and I do.
(After further submissions)
2. There is a dispute between the parties as to the validity of an application for payment and of a payment notice. Those are said to have been served by the Defendant and the Claimant respectively in March and April of last year.

3. On 2nd December of last year the Claimant issued Part 8 proceedings seeking the court's determination as to the validity of the payment application 14 and of payment notice 14.
4. On 16th December 2021 an acknowledgement of service was served saying that the Part 8 claim related to an ongoing adjudication; that it did not fully represent the Defendant's position on the facts; and that the personal service of documents was registered with the court on 2nd December. The rest of the acknowledgement of service makes reference to the adjudication and says a substantial dispute of fact is involved. However, it does not identify the factual matters relating to the issues in the Part 8 claim which are said to be in issue.
5. On 22 March 2022 O'Farrell J gave directions in this matter providing for today's hearing. In the recital to her order O'Farrell J noted that there had been an acknowledgement of service without the service of evidence and that the Defendant intended to object to the Part 8 process as being premature. The order provided at paragraph 2 that:

"The parties shall co-operate in ensuring all documents necessary for the court to determine the Part 8 claim and/or the Defendant's objections are made available in electronic form in good time before the hearing."
6. That, as I repeat, was on 22nd March. Mr Paduraru's first witness statement was dated 4th April. In that he sets out matters of history; advances contentions as to why the payment notice was not valid; and says that the payment application was served timeously because the day the contract provided for was a Sunday and the application was served on the next working day. I note in passing that there is a dispute not as to the time of service but as to whether that in effect was on the next working day.
7. That witness statement was dated 4th April.
8. It is against that background that today's hearing, as I have already said, was listed on 22nd March.
9. On 7th April 2022 the Defendant made an application that the Part 8 claim be struck out because it was an abuse of process on the ground that there was a substantial dispute of fact between the parties and the claim was not suitable for resolution by Part 8 proceedings. On the same date Mr Paduraru served a second witness statement. In that he repeated much of the material that had been said before but make the additional point that one of the previous payment applications, sometime in 2020, had been on a Sunday or rather the specified date had been on a Sunday and that the application had been served on the following Monday and accepted.
10. Today Mr Edwards has striven to persuade me that there is a dispute of fact between the parties. There is clearly a real dispute between the parties as to the true value of the works but that is not the issue before me. Mr Edwards accepts that there is no dispute of fact as to the second element which is whether the payment notice 14 was a valid payment notice. The facts are clear. The question in respect of the validity of the payment notice is a matter of construction and interpretation.
11. As to the invalidity or otherwise of application 14, the Defendant's case at its very highest is that there was some form of variation of the agreement in 2020 to the effect that applications could be sent on the Monday following a Sunday if the date for the application in the contract was a Sunday. That is not put in clear terms in any of the material before me. At the very highest it is inferential if that and it really only emerged in Mr Edwards's submissions to me. Mr Edwards accepted, having taken 4instructions, that there were no oral exchanges: there was at most correspondence by way of email or letter or otherwise.
12. In those circumstances it seems to me there is no dispute of fact. The parties are agreed as to what the correspondence and exchanges were. They differ as to the interpretation and the effect of those exchanges but those are matters that are entirely apt for Part 8 proceedings. It follows that the application to strike out is dismissed.

(After further submissions)

13. I rehearsed the history of this matter a little earlier in my brief judgment when I rejected the application that the claim should be struck out on the footing that the matter was not suitable for Part 8 proceedings. After making that ruling I gave Mr Edwards an opportunity to take instructions as to whether he wished to seek an adjournment, making the point that I would still have to hear from Mr Frampton and would need some persuasion as to whether there should be an adjournment and that there would be cost consequences of any adjournment. At that stage Mr Edwards on instructions made no such application.
14. Mr Frampton was then in the course of his submissions when Mr Edwards informed me that his instructions had changed. Mr Edwards now seeks an adjournment. He says that in the period leading up to the date of 21st March 2021 there were discussions and negotiations between the parties and that the Defendant would wish to adduce evidence of those. Mr Edwards helpfully and properly does not suggest that those negotiations came to a conclusion leading to a variation of the contract.
15. He says that what he sought was an adjournment for a few weeks.
16. It would be appropriate, having regard to the overriding objective, at least to consider an adjournment if there were a real prospect of material being put forward that would affect the ultimate outcome. Even then the court would have to consider all the other factors in the overriding objective, including the proper use of court time, compliance with court orders and so forth. The position, however, is that despite Mr Edwards's efforts this application does not even get past first base. That is because the adjournment if granted would take up time but would produce material that, assuming it says what Mr Edwards says it does, would not advance matters. The fact that the parties were in negotiations absent an agreement varying the contract would not alter the timescale for service of notices. The application is accordingly refused.