

Whether a developer is entitled to summary judgment on LADs as a debt

Balfour Beatty Construction Northern Ltd v Modus Corovest (Blackpool) Ltd [2008] EWHC 3029 (TCC) (QBD (TCC)). The defendant, Modus Corovest (Blackpool) Ltd (“Modus”) engaged the claimant, Balfour Beatty Construction Ltd, to carry out the design and construction of works at a shopping centre. The contract incorporated the JCT SFBC with Contractors Design (1998) with amendments. A dispute arose as to whether Balfour Beatty had performed work that entitled it to additional payment which was referred to adjudication. Balfour Beatty sought summary judgment on two separate claims, the first being the enforcement of the adjudicator’s decision and the second based upon an interim payment in its favour. Modus challenged enforcement, submitting that (1) it was not obligated to pay the sums due under the adjudicator’s decision because he had failed to give a reasoned decision (the adjudicator in his decision described it as “not reasoned”); (2) Balfour Beatty was only entitled to amounts that were “properly due” under the contract and Modus was therefore entitled to set off its claims for liquidated damages despite not having served a withholding notice; (3) it was entitled to summary judgment on its liquidated damages claim because it had provided notice to Balfour Beatty in accordance with cl. 24.2.1 of the contract, yet Balfour Beatty had not yet served a withholding notice; (4) since its agent had fixed the completion dates, the sums claimed in its notice were due as a debt. The question for the court was whether, under a JCT Contract, a developer was entitled to summary judgment on the payment of liquidated damages as a debt in court. The court enforced the adjudication decision whilst rejecting Modus’s counterclaim for summary judgment on its liquidated damages. The court found that, although the adjudicator had stated that his decision was not reasoned, such words were not conclusive as in fact his decision contained an explanation as to how the decision was reached. It was further held that Modus was not entitled to set off liquidated damages against amounts owed under the contract and in the absence of a withholding notice. The court further held that, if the dates fixed by an employer’s agent were in dispute, the employer could not be entitled to summary judgment for liquidated damages calculated in reliance on those dates.