



Eatons

Contract Ceases When Small Breaches Repeated

Customers who don't pay their bills are bad enough, but customers who don't pay their bills and then attempt to sue when the supplier stops work could be considered to be very bad news indeed.

This situation can occur if a customer suffers a loss because their supplier has not done the work contracted and the contract is still 'live'.

In a recent case, a consultant engineer was retained to advise another consulting firm which had successfully tendered to manage a project to remove radioactive waste. The payment for his work was based on an agreed hourly rate with monthly billing. For more than 18 months the consulting firm failed to pay his invoices when they fell due and the delays were substantial. After making repeated complaints, the engineer refused to continue to work for the firm, which then instructed another firm. The consulting firm brought a claim against the engineer for the losses his cessation of work caused them and, not unexpectedly, he counterclaimed for the amount of his outstanding bills.

The engineer argued that the consulting firm's repeated failure to pay him with reasonable promptness meant that it had repudiated its contract with him. The consulting firm argued that it had not breached the contract, because the payments were made eventually and the breaches of the agreed terms were not sufficient to justify bringing the contract to an end.

The case reached the Court of Appeal, which upheld the engineer's argument. It was of particular importance to the decision that the consulting firm had repeatedly and cynically breached the agreement regarding payment terms despite numerous complaints. He was therefore entitled to consider that there was every likelihood this would continue to be the case.

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“One of the reasons why this affair resulted in a prolonged court battle was that the contract terms were agreed verbally, without the benefit of a proper contract being put in place,” says Marcus Baff. “A written contract in the right form would have allowed each side to understand where they stood and would have provided a mechanism for the termination of the contract which was unequivocal. If you are entering into contractual negotiations, we can advise you.”

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