

JUDGMENT : His Honour Judge Mackay : 26th September.2001. TCC.

1. This is a claim by the claimants arising out of an adjudication pursuant to the Housing Grants Construction and Regeneration Act 1996. I have been greatly assisted by counsel, by the bundle of documents, by skeleton arguments, by the statements of various interested parties and, in particular, by a chronology prepared by the defendants which is appended to the skeleton argument of counsel for the defendants.
2. This is an unusual case. I do not proposed to give a long judgment because it seems to me that it is likely that the Court of Appeal will have the opportunity to reconsider my decision and to say whether or not it was correct.
3. My decision can be discerned and can be seen from the following comments. The claimants have, in my view, an unanswerable claim under the 1996 Act. The adjudication proceedings were carried out correctly. The defendants made the necessary representations to the adjudication proceedings, and those representations did not weigh with the adjudicator because he plainly had limited powers under the statute to adjudicate on those issues which were put before him by the parties which relate only to the work of construction which was carried out.
4. What was that work of construction? It was the work of construction of lighting systems and the like in the Millennium Dome. The defendant is the main contractor, the owner of -- or certainly the person responsible for -- the operations of the creation of the Millennium Dome in Greenwich in London. The claimants are a lighting company. So we can see that these operations were carried out, according to the claimants, and various bills and the like were produced, and the total sum is in the region of £290,000.
5. If this were a normal case, there would be no possible objection to the claimants receiving their money. But there is a possible objection; there is a severe objection; there is, in my view, an insurmountable objection to the claimants getting summary judgment for this money; and it is encapsulated in the skeleton argument of the counsel for the defendants and in the statements obtained by the solicitors for the defendants, in particular the two statements of the solicitor representing the defendants.
6. The essential point in the defendants' argument is this: it is that the claimant company is a fraudulent vehicle, and a fraudulent vehicle owned, operated, managed, controlled, supervised and executed by a senior official employee, a person responsible for the works to be carried out on behalf of the defendants themselves: a Mr. Brophy. What the defendants say in their arguments before me is that Mr. Brophy wrongfully, in breach of his contract, conspired with other persons to create a company to carry out work on the Dome, and he, as a leading person in the lighting department of the Dome company, would be in a position to see that that company got the work; that the shares in the company were owned by his mother; and that his wife, Bragg, took a leading all in the performance of, first of all, his unlawful, fraudulent and criminal conspiracy, and -- bizarrely, incredibly - was employed by the defendant company themselves.
7. The supervision of the defendant company and the supervision of works at the Dome need thorough investigation. But it is clear to me that, if the defendants are correct, then the court will be advancing to the claimants monies brought about and created by this unlawful and fraudulent conspiracy. If the defendants are entirely wrong, then the claimants are entitled to their money.
8. I have been referred to numerous cases with regard to insolvency and the like, but the main effect of these cases is to instruct me that, whilst claims under the 1996 Act should normally go through -- and should go these even in cases where there may be a repayment by a company which is, in itself, bankrupt, insolvent or in financial difficulties -- there is no overriding objective upon the court to ensure that fraudulent claims should benefit from their fraud; and this, plainly, is the defendants' contention in this case.
9. It seems to me that the merits are entirely with the defendants on the assertion that no judgment should be obtained immediately. That is not to say that no judgment might be obtained in the future; it all goes to show whether the allegations of the defendants are correct. But -- and it is a big "but" -- during argument I asked counsel for the claimants whether he was in a position to make comment on and agree the essential assertions in this case (namely that Brophy was the creator of this company; that he was employed by the defendants as the head of lighting; that he used his wife in the performance of the company; and that the

shares were owned by his mother). Counsel for the claimant -- and I make no criticism of counsel for the claimant -- said to me that he had no instructions on this matter.

10. This seems to me to be of fundamental importance. It is not merely a question of the burden of proof; it is a question of doing justice, and courts have to operate in the real world, not an artificial world put upon them by legal constraints. In failing to rebut, either by implication or by cogent evidence, the initial and fundamental assertions of the defendants, it seems to me that this court has no power but to refuse the application for summary judgment.
11. I accept and adopt all the arguments put forward by leading counsel for the defendants in the skeleton argument, and I also agree with him that the assertions made by Mr. Gordon on behalf of the claimants do not merit -- and do not rise to the level of merit -- of the serious nature of these allegations. Merely to say that one refutes them is to put, in my view, a needless and unhelpful legal gloss on what is a real situation. Therefore I am refusing the claimants their application for summary judgment.

For the claimant: MR. M. WOOD (instructed by Knowles Lawyers Ltd.)

For the defendant: MR. R. SALTER Q.C. (instructed by Messrs. Berwin Leighton Paisner)