CA on appeal from Milton Keynes County Court (HHJ Serota QC) before Tuckey LJ; Arden LJ; Lawrence Collins LJ. 8th February 2007.

JUDGMENT : LORD JUSTICE LAWRENCE COLLINS

1. This is an appeal from a judgment of HHJ Serota QC given on 11 April 2006 on the trial of a preliminary issue.

2. In July 2002 Mr and Mrs Bassano engaged Mr Battista to complete building works at their home, North Lodge, Potter Row, Great Missenden, which were left unfinished by their former builder.

3. In about the middle of June 2003 the parties had a serious disagreement and Mr Battista left the site after Mr and Mrs Bassano discovered that one of the workmen, Rob Gittings, was only being paid £60 a day as opposed to the £125 a day that they were paying Mr Battista. There was inter-solicitor correspondence in December 2003 and January 2004 in which the Bassanos claimed, and Mr Battista denied, that the daily rate per man was to be £125, on the understanding that this was the amount actually paid to the workmen who were self-employed.

4. The action began in February 2004 with a claim by Mr Battista for about £15,500 for unpaid labour and materials. The Particulars of Claim pleaded that by an oral agreement it was agreed that Mr and Mrs Bassano would pay Mr Battista the sum of £125 per day per man utilised on site, Mr and Mrs Bassano would meet the cost of materials and Mr Battista's costs, and Mr and Mrs Bassano would pay VAT if applicable.

5. In Mr and Mrs Bassano's original Defence and Counterclaim served in February 2004 they made the following claims: a) that they had been overcharged for the hire of a digger and dumper in that it had been agreed that the rates to be charged would be those charged by local hire companies; b) that the contract had overrun because Mr Battista had failed to supervise the works adequately and/or had failed to ensure that the work progressed at a reasonable rate; c) that Mr Battista had sought to charge a 10% mark up on his own labour; and in any event before the project had been completed; and d) that there were defects in the works carried out.

6. In witness statements in January 2005 Mr and Mrs Bassano said that Mr Battista had told them from the outset that he would not be charging VAT because the cash would be passed onto the workmen who were self-employed.

7. An order of District Judge Mostyn in the Milton Keynes County Court on 2 March 2005 recited Mr and Mrs Bassano's agreement that their case as to the terms of business agreed between the parties, was that the Bassanos would be charged £125 per day per man, and £150 per day per man in respect of the senior carpenter, and 10% of the total labour and material costs; and that Mr Battista would be paid £125 per day and that payment would be made by Mr Battista to his operatives.

8. In June 2005 Mr and Mrs Bassano served a draft Re-Re-amended Defence and Counterclaim introducing allegations of fraud. On 30 September 2005 District Judge Mostyn refused permission to amend to introduce those allegations and Mr and Mrs Bassano appealed, and the matter came before HHJ Serota in December 2005. During the course of that hearing the parties agreed that allegations of fraud and deceit would not be reintroduced, but that Mr and Mrs Bassano could amend to plead an allegation that the terms of the contract between the parties were that Mr Battista was to act as Mr and Mrs Bassano's agent in engaging labourers who would be Mr and Mrs Bassano's direct contractors such that any money paid to Mr Battista in respect of labourers was to be paid over in its entirety to those labourers.

9. Paragraph 6(a) of the Re-Re-amended Defence and Counterclaim stated that for the avoidance of doubt it was their case that the correct legal analysis of the contractual arrangements was that the labourers and tradesmen were not in fact to be sub-contractors but were to be engaged and paid in their capacity as self-employed persons by Mr and Mrs Bassano, and that Mr Battista's role was to select them on the basis of his skill and experience and, acting as their agent, to engage them on their behalf.

10. The principal preliminary issue ordered by the judge to be tried was this: was it a term of the agreement between the parties that Mr Battista was to pay over all sums provided by Mr and Mrs Bassano in respect of labour costs to the labourers and tradesmen as agent for Mr and Mrs Bassano?

11. Because so much of the argument before the judge and in this court has involved Mr Battista's VAT status, there are two points to be made to put the judgment in context. First, the Bassanos' case was that they had raised with Mr Battista the question whether they would have to pay VAT and he assured them that because they would be employing the workers themselves, payments due to them would not form part of his turnover for VAT purposes. Mr Battista's case was that he said no such thing and did not think at the time that VAT would be payable on the amounts due to him. Second, the judge had before him a letter from Mr Russell, a surveyor, written shortly before the hearing. Mr Russell's letter said that he was present at a meeting with Mr Battista and a Mr and Mrs Bradley when Mr Battista was bidding for the renovation and extension of their home in 2001. Mr Battista, according to Mr Russell, told the Bradleys that they would pay a pre-agreed daily rate for each tradesman and labourer at the end of each week in cash to Mr Battista, who would pass the payments on to the respective workmen. He explained, according to Mr Russell, that as they were self-employed their turnover was below the VAT qualifying threshold, they were not VAT registered, and therefore the client would not have to pay VAT on the labour content. Mr and Mrs Bradley wrote a letter to the court stating that they had agreed a rate of £125 a day but did not discuss with Mr Battista what rate he paid his staff.

12. The judgment referred at paragraph 22 to Mr Battista's evidence that he knew the VAT threshold, which was £55,000 at the relevant time, but that he did not give VAT a thought and when he realised that it might exceed the threshold he went to see his accountant about it. The judge went on: *"Having seen Mr Battista in the witness box, what he has said about VAT and effectively appreciating that he was probably going to go over the threshold but did not do very much about it until he really had to, seemed to me to have the ring of truth".*

13. The principal findings were as follows:

"36. Broadly speaking I prefer the Claimant's submissions. Even if the Claimant may have been mistaken as to some details, he accepted the errors in his chronology quite readily. I believe, having seen him in the witness box, that he was an honest witness and his case depends more on honesty than anything else. The Defendant's case involves my making a finding that the claimant deliberately misled the defendants and also previous clients. It is far too late, it seems to me, for me to order disclosure of further VAT records. In relation to the case on VAT it is significant that the claimant arranged for registration before his dispute with the Defendants arose. I accept that he may well have been over-optimistic or extremely careless as to the effect of payments on the VAT threshold, but I am not satisfied that he intended to mislead the Defendants and nor am I satisfied that he lead them to suppose that the amounts they paid in respect of tradesmen and labourers would be paid directly, whether to avoid the VAT threshold or generally.

"37. The Defendants are highly intelligent, but in my view were commercially naive to believe that the kind of contract they entered into, such as was let to the Claimant, was more appropriate than a contract which may have seemed to cost more but where there would have been a proper contract, independent supervision, and clearly defined specification, time scale, and price.

"38. I am not satisfied that any of the three witnesses from whom I have heard is wholly clear about what was said at what meeting or where these conversations took place, but I am clear, however, as to the substance.

"39. I prefer the Claimant's case as to the contractual terms that were agreed. The Defendant's case makes no sense commercially. Why should all trades be paid the same? Why should work-men be paid far more than the going rate? The profit for the claimant would be negligible; he would only receive it at the end. He would have to cover all his overheads from his daily earnings. In those circumstances why on earth would he abandon his right to claim weekly payments if he was expecting to be forking out these relatively significant sums, which included his profit, to the workmen between January and April. I have to say I have never come across an arrangement such as the Defendants are putting forward. I accept that such terms may be agreed, but the far more usual term is in day-work contracts for a charge to be made, so much per day per man, so much per day per machine.

"40. I have regard to what Mr Russell says and what the Bradleys say. Neither of them have been cross-examined, and I do not think in the absence of cross-examination it would be right to place any great emphasis on evidence of either of them, but the Bradleys significantly undermine what Mr Russell says, and on balance I will accept their evidence because it corroborates what the Claimant said and what my understanding is of usual practice. I accept that rather than the evidence of Mr Russell, which would mean that the Claimant had not only been guilty of lying to the Defendants but also to other clients, and I can see no reason why he should have done so. Why on earth should he have deliberately lied to the Defendants about his charges?

"41. There is no suggestion that the amounts that he was charging were unreasonable and the Defendants were willing to pay them. I can only conclude that the Defendants were mistaken and had got hold of the wrong end of the stick. In the real world builders do not pay their client's workmen and pay for materials as the Defendants suggested that the Claimant did between January and April. The Defendant's case, in my opinion, defies common-sense.

"42. So far as VAT is concerned, I have already noted that the Claimant did take advice and seek to register with retrospective effect during the job and asked that the Defendants should pay VAT. This is so even if the retrospective registration was effected later. The registration was, as I have said, effected in September but backdated in effect."

14. Permission to appeal was refused by Hallett LJ on paper but granted by Moore-Bick LJ following oral renewal. An application for permission to adduce new evidence was adjourned to the substantive hearing of the appeal.

15. I turn now to the essence of the appeal and Mr and Mrs Bassano's criticisms of the judgment. In their Notice of Appeal they seek an order determining the preliminary issue in their favour, but on the hearing of this appeal Mr Janusz on their behalf accepted that even if he succeeded in his grounds this court could not resolve the conflict of evidence and a retrial would be inevitable.

16. Mr Janusz argued that Mr and Mrs Bassano's common law right to a fair trial reinforced by the incorporation into domestic law of the European Convention on Human Rights includes the right to have the judge provide adequate reasons for his decision, relying on ***Flannery v Halifax Estate Agencies Limited*** [1999] EWCA Civ. 811; [2000] 1 WLR 377. He says that in essence all the judge did in this case was to say that, broadly speaking, he preferred Mr Battista's submissions. This is a very long way from fulfilling his duty to give adequate reasons.

17. Strong reliance on his perception of the inherent probabilities meant that the judge had failed to use the advantage he had of having the witnesses before him. This, coupled with the point that the judge had failed to show that he had adequately tested his favourable opinion of Mr Battista against the whole of his evidence,

meant that the usual reasons for an appellant court being reluctant to interfere with factual decisions which turned on conflicting oral evidence did not apply here.

18. The criticisms made by Mr Janusz on behalf of Mr and Mrs Bassano of the judge's decision can be put into two groups, namely: 1) failure to give adequate reasons; and 2) grounds for arguing that the decision was wrong, although he accepted that there was no clear line dividing the two.

19. So far as the failure to give adequate reasons is concerned the principal complaint was that the judge failed to give reasons as to why he found the Bassanos' evidence to be less credible and/or reliable than that of Mr Battista, and that certain matters called for a cogent explanation to be given for preferring Mr Battista's evidence when it was in conflict with that of Mr and Mrs Bassano, namely: (1) Mr Battista's reliance in support of his case on his 2003 VAT return which was palpably wrong, in that it demonstrated that he had grossly understated his turnover; (2) the numerous errors in Mr Battista's written evidence in relation to the chronology and detail of events surrounding the conclusion of the contract; (3) the evidence of Mr Russell that Mr Battista had an arrangement with the Bradleys similar to that alleged by the Bassanos.

20. Within the second category in particular are: (1) the wrong rejection of the evidence of Mr Russell; (2) the judge's use of his own perception of the commercial probabilities when credibility and/or reliability were far more significant factors; (3) a decision of central issues of fact against Mr and Mrs Bassano on the basis that they were merely mistaken when it was impossible for them to be merely mistaken as opposed to dishonest in relation to certain matters in their evidence, which it was said were consistent only with their evidence on the central points being correct, in particular their evidence as to their reaction when they first discovered that Mr Battista was not paying all the money over to the workmen and as to his reaction when he first discovered that the workmen were not getting all of the money; and (4) the judge's failure to take proper account of the VAT aspects of the case.

21. Mr Janusz went on to say that the reasons the judge gave for saying that the Bassanos' case made no sense commercially were inadequate support for his decision and/or were flawed in particular for the following reasons. First, there was no lack of commercial sense to the contract advanced by Mr and Mrs Bassano. It may be unusual but that does not deprive it of commercial sense, and indeed it would put Mr Battista at a competitive advantage if VAT did not have to be charged. Second, so far as the point made in relation to all trades being paid the same was concerned, the point could equally be made that it is difficult to see why the charge made to Mr and Mrs Bassano should be the same for every man working on the site irrespective of his level of skill. Third, it was of no relevance to the question that some of the labourers were being paid more than the going rate, particularly when there was no evidence to suggest that Mr and Mrs Bassano would have been aware that such was the case. Finally, the profit for Mr Battista would not have been negligible.

22. As regards VAT, the Bassanos say that Mr Battista's evidence that, although he considered that the cost of the labour which he supplied was part of his turnover, he did not appreciate that his business required to be registered for VAT until well after the work at Mr and Mrs Bassano's house commenced, is incapable of rational belief. In this connection Mr and Mrs Bassano seek to rely on new evidence from Mr Hailey and Mrs Eaden, to which I will refer later.

23. Three matters in particular are relied on: First, Mr Battista can have been under no misunderstanding when he took on the project in 2002 that had all the labour costs formed part of his turnover, his turnover was going to exceed the relevant VAT threshold: (a) he admitted in cross-examination that he knew at all times that the threshold was £55,000; (b) any consideration of what the likely cost of the work at the house would be leaves out of account any work for other clients which Mr Battista had done in the year or was likely to do in the year; (c) his evidence was that he was continually in work, that he had work for four years ahead of him and had been giving his team of workers work on an almost continual basis.

24. Second, Mr Battista cannot have declared the full extent of his turnover in respect of the works he carried out at the home when he submitted the VAT return in 2003 for the period which covers the whole of his working at the home. The turnover in respect of the work at the house was a minimum of about £191,000; VAT, chargeable, would be about £33,000. The total turnover declared on the return is about £244,000. It is inconceivable that all the other work which he did in the relevant period could have generated additional turnover of only around £53,000, but what is indisputable is that the return states that the VAT due on his turnover is only about £18,000, which is about £15,000 less than the minimum chargeable on the work done for Mr and Mrs Bassano.

25. Third, Mrs Bassano gave evidence that the reason that they were given by Mr Battista in September 2002 for the cost of Dave Pyle, the senior carpenter, going up was that he had just become VAT-registered, which undermines Mr Battista's account of the arrangements which if true would have made the VAT charge by Mr Pyle irrelevant.

26. We did not call on Mr Yeo for Mr Battista, except on the question of the introduction of new evidence, but the principal points made by him in written submissions were these. First, it is not necessary for the court to deal with every argument presented; it is sufficient if it makes plain the principles on which it acts and the reasons which led it to its decision Second, the judge held that Mr *Battista "may well have been over-optimistic or extremely careless as to the effect of payments on the VAT threshold",* and given the fact that Mr Battista had sought advice about registering for VAT before any dispute arose with Mr and Mrs Bassano, this conclusion was clearly open to the judge and his reasons are adequately expressed. Third, Mr and Mrs Bassano's case makes no commercial sense. If, which is denied, Mr Battista was happy to under-declare his income to the Revenue, then there was no reason

for him to have been concerned to enter into a complicated scheme which meticulously kept his strict turnover below the threshold.

27. I come now to my conclusions. This court was referred to several recent cases on the duty of a judge to give adequate reasons, particularly in a case which turns on the credibility of witnesses: Flannery ***v Halifax Estate Agencies Limited [***1999] EWCA Civ. 811; [2000] 1 WLR 377; **English v Emery Reimbold & Strick** [2002] EWCA Civ. 605; 1 WLR 2409; ***Munt v Beasley*** [2006] EWCA Civ 370; ***Yagoob v Royal Insurance (UK) Ltd*** [2006] EWCA Civ 885.

28. The following general propositions can be derived from them and from the recent cases on the power of this court to review judgments based on credibility especially as ***Assicurazioni Generali SpA v Arab Insurance Group*** [2002] EWCA Civ 1642, [2003] 1 WLR 577. The duty to give reasons is a function of due process and therefore justice, both at common law and under Article 6 of the Human Rights Convention. Justice will not be done if it is not apparent to the parties why one has lost and the other has won. Fairness requires that the parties, especially the losing party, should be left in no doubt why they have won or lost. Want of reasons may be a good self-standing ground of appeal.

29. Where there is a straightforward factual dispute whose resolution depends simply on which witness is telling the truth about events which he claims to recall, it is likely to be enough for the judge (having, no doubt, summarised the evidence) to indicate simply that he believes X rather than Y. This does not mean that there is one rule for cases concerning the truthfulness of witnesses or recall of events and another for cases where the issue depends on reasoning or analysis. The rule is the same. The judge must explain why he has reached his decision.

30. The appellate court may be satisfied that the judge has not taken proper advantage of having seen and heard the witnesses, for example by failing to stand back and weigh the overall probabilities of the situation. If the judge has not taken proper advantage of that opportunity, by failure to make findings of fact which were essential, by failing to address the question of credibility, then it cannot be enough for the appellant court simply to say that the judge believed the witnesses.

31. In this case it was common ground that Mr Battista was engaged on a day rate basis and that the Bassanos had agreed to pay £125 per man per day for labour, with the exception of the chief carpenter at £150 per day. It was common ground that Mr Battista did not pay all the labourers £125 per man per day but paid them varying rates according to their experience.

32. There was a major conflict of evidence at trial. The evidence of Mr and Mrs Bassano was that Mr Battista had said to them in explanation for the fact that he was not VATregistered and therefore would not be charging VAT that the cost of other labourers and tradesmen would not form part of his turnover. Mr Battista's evidence was that, although he considered that the cost of the labour which he supplied is part of his turnover, he did not appreciate that his business required to be registered for VAT until well after the work at the house commenced.

33. The skeleton argument on behalf of the Bassanos prior to the trial stated: *"All of the issues before the court are pure questions of fact and will turn on the relative credibility and reliability of the evidence called on each side."*

    There were only written closing submissions at trial and in the closing submissions on their behalf it was repeated that the resolution of the issues would turn on the relative credibility and reliability of the evidence.

34. The closing submissions said that it was merely a question of determining whose recollection of what was said and agreed was more likely, having regard to whose evidence appeared more reliable and credible. In the closing submissions particular attention was given to these matters: (a) whether, as Mr Battista said, the arrangement which he said had been made was usual, whereas on the Bassanos' account it would be unusual, un-commercial and unprofitable; (b) the reasons why the Bassanos' evidence was more likely to be credible, including the fact that they were articulate and intelligent professional people, and the project was a single and significant event in their life; (c) Mr Battista's chronology of events was wrong; (d) Mr Battista must have known that he was over the VAT threshold and the Bassanos asked about VAT and his credibility was affected by what was said to be the palpably incorrect VAT return in 2003; (e) the Bassanos being asked to pay the VAT on Mr Pyle's pay was powerful support for their case that they would be paying the workers direct; (f) the Bassanos' account was given strong support by the letter from Mr Russell (g) the only contemporaneous record, Mr Bassano's note, was supportive of their position; and (h) their case was supported by their reaction when they discovered that Mr Gittings was not getting more than £60 per day and Mr Battista's reaction at the same time to that discovery.

35. In the light of those submissions the judge had to decide what was said at a meeting some four years previously. The only contemporaneous document was the note which Mr Bassano took of the conversation, which refers to a day rate of £150 for one carpenter and £125 for everyone else (with a plumber at £15.60 per hour) and *"10% of everything material + labour"*.

36. The parties gave evidence and the judge preferred the evidence of Mr Battista. He was entitled to form a view of Mr Battista in the witness box. He was fully entitled to give little weight to the evidence of Mr Russell when it was not supported by the Bradleys.

37. The essence of the judge's decision was as follows: first, Mr Battista was an honest witness and had not deliberately misled the Bassanos; second, the fact that he had made errors in the chronology did not affect that conclusion; third, his evidence that he did not deal with VAT until he had to, had the ring of truth; fourth, he had arranged for VAT registration before the dispute had arisen and may well have been over-optimistic or

extremely careless as to the effect of payments on the VAT threshold; fifth, Mr Battista's case made more commercial sense and the Bassanos' case defied common sense; sixth, little weight should be placed on the evidence of Mr Russell or the Bradleys.

38. Some of the matters with which the judge did not deal were relatively minor, such as the date when he was asked to quote and whether he was to start at the lounge end or the kitchen end, and there is no basis for arguing that the judge was under a duty to deal with them.

39. I am satisfied that the conclusion that Mr Battista *"may well have been over-optimistic or extremely careless as to the effect of payments on the VAT threshold"* was open to the judge.

40. In addition to the "*no reasons"* point, Mr and Mrs Bassano attacked these conclusions on their substance. First, they attacked the judge's reliance on Mr Battista's evidence that he consulted his accountant about VAT in March 2003 before the dispute had arisen. Mr Janusz submitted that the letter from the accountant regarding the date at which Mr Battista first spoke to the accountant was unsatisfactory, as among other things it did not state what was said at the meeting.

41. In his first witness statement made on 1 February 2005, Mr Battista said that he told the Bassanos on 13 June 2003 (after the dispute had arisen) that he would discuss VAT with his accountants, which he did, and then told Mr and Mrs Bassano that he had been advised that since he had exceeded the VAT threshold it would be necessary to charge VAT. In his second witness statement made on 23 January 2006 he said that he had consulted his accountants prior to the falling out with Mr and Mrs Bassano after he became concerned about the question of VAT towards the end of the contract. Having done so, and having been told by his accountants that he would have to register for VAT, there was a meeting with Mr and Mrs Bassano when he told them that they would have to pay VAT on the job. That was the meeting in June. Then in his third witness statement made on 2 March 2006 he said that he had contacted his accountants and asked them if they would write stating when the VAT registration was first discussed and a fax was produced from Sally Hicks of Ashby's, accountants in Tring, dated 1 March 2006 that the late VAT registration was first discussed with him at the end of March 2003. Mr Battista's evidence in the witness box seemed to be that he did large jobs but not all of the time. He was not seriously pressed on this subject in cross-examination.

42. In the face of the evidence about the visit to the accountants, the judge's finding on this point cannot be faulted.

43. Second, the Bassanos attacked the judge's failure to take account of the fact that Mr and Mrs Bassano had been asked to pay VAT on the carpenter Dave Pyle's charges, which they say undermines Mr Battista's case. There was some, albeit unclear, evidence, that Mr Pyle had always charged Mr Battista VAT on top of his rate because he was registered for VAT throughout. Mr Battista's case was that his request for payment of the additional VAT was simply a case of his passing on an increase in his own expenses. Mr Pyle did not give evidence, the documents were equivocal and the cross-examination of Mr Battista was inconclusive. In those circumstances the judge cannot be faulted for not having taken this into account.

44. Third, the Bassanos seek to adduce new evidence to undermine the judge's finding that Mr Battista was simply careless about his VAT position and to show that he was dishonest in not registering for VAT and in submitting a false return in 2003 whilst registered. The new evidence concerns his turnover in the relevant period 2001 to 2002 and consists of statements from Mr Hailey and Mrs Eaden.

45. Mr Hailey is a quantity surveyor and he gives information as to a series of estimates which he provided to Mr Battista over a three-year period. These relate to eight properties and range from approximately £16,000 to £88,000. Mr Hailey states that Mr Battista undertook three of these jobs, totalling about £234,000, in the period January to September 2001. This would put his income for that period clearly in excess of the VAT threshold for that year.

46. Mrs Eaden is a previous client of Mr Battista. Mr Janusz accepts that most of her witness statement would not satisfy the criteria for the admission of additional evidence, but he seeks to have introduced those parts of her witness statement which go to his earnings for the work he did on her property, which indicate that the job was worth more than £100,000.

47. Under the regime of the CPR this court has applied much the same approach as the Ladd v Marshall [1954] 1 WLR 1489 principles previously applied under the RSC, namely: (1) that the evidence could not have been obtained with reasonable diligence for use at the trial; (2) that the evidence must be such that if given it would probably have an important influence on the result of the case, although it need not be decisive; (3) the evidence must be such as is presumably to be believed; it must be apparently credible although it need not be incontrovertible.

48. As Waller LJ said in ***Riyad Bank v Ahli United Bank (UK) PLC*** [2005] EWCA Civ 1419 at paragraph 33, the ultimate question is whether fairness requires the principle of finality to be overridden. As a matter of principle the court should be cautious about admitting evidence by which it is sought to persuade the appellate court to reverse a judge's assessment of credibility or reliability, or to order a new trial.

49. The new evidence is of course irrelevant to the lack of reasoned grounds and even on the other grounds it goes substantially to credibility and not to any real issue, and is now deployed solely to obtain a new trial. Whether Mr Battista's turnover exceeded the threshold was in play in the litigation at least since his January 2005 witness statement, and was not fully explored with him as it could have been in the witness box. No cogent grounds have

been advanced with the submission that the evidence could not have been obtained earlier. I am satisfied that neither the Ladd v Marshall criteria nor the requirements of justice justify the admission of this new evidence.

50. To conclude, in my judgment this is a case in which reasons sufficient to comply with the common law and Convention standards have been given. This was a straightforward factual dispute whose resolution depended largely on an assessment of the three witnesses. The judge took proper advantage of having seen and heard the witnesses and he did not fail to stand back and weigh the overall probabilities of the situation. His estimate of Mr Battista formed a substantial part of his reasoning and conclusions and should not be disturbed.

51. The judge made his finding of credibility against a background of his conclusions as to the commercial reality and against his rejection of the attack on Mr Battista's credibility with regard to his VAT status. There was evidence, which he was entitled to accept, that Mr Battista had gone to his accountants in March 2003 before the dispute arose. There was evidence which might have justified a conclusion that Mr Battista had far exceeded the VAT threshold in 2002 and that he understated his turnover when he came to file the late Return in 2003; but the judge was entitled to find that he was careless or over optimistic and was not lying in order to support his version of the contractual arrangements, and that he had not structured the contract to avoid the VAT consequences of his turnover exceeding the threshold.

52. I would add that despite the increasing number of cases on the *"no reasons"* point, it should not be thought that every failure to deal with every argument or factual matter will give the unsuccessful party the right to a retrial. The reasons must be satisfactory, but not necessarily exhaustive; all depends on the circumstances. Nor should it be thought that an unsuccessful party faced with a decision which that party considers insufficiently reasoned should simply use the tactic of sitting back and taking its chances on an appeal. It should not be forgotten that a judge may be asked to give reasons after judgment.

53. I agree with Hallett LJ's view that the costs incurred to date were out of all proportion to the amount at stake. It seems that between them the parties have incurred costs of more than £140,000 (excluding the cost of this appeal) in relation to a dispute in which Mr Battista claims about £30,000 and the Bassanos claim about £70,000, and perhaps more since the court was told that they are pursuing a delay claim against Mr Battista. If ever there was a case for mediation, this is it.

54. I would therefore refuse the application for the introduction of fresh evidence and dismiss the appeal.

55. **LADY JUSTICE ARDEN:** I agree with the judgment of my Lord, Lord Justice Lawrence Collins, and with the order that he proposes. I particularly agree with the propositions to be deduced from the authorities to which he refers, and with his further observations that reasons must be satisfactory but they need not be exhaustive.

56. I would like to say a little more about how the appellate court determines whether other reasons given by the judge were sufficient in law, and I purport to do this by reference to the decision of this court in ***English v Emery Reimbold & Strick Ltd*** [2002] 1 WLR 2409. The starting point is that the judge need not deal with every point, but the basis of his decision must be clear. In the ***English*** case, this court adopted with approval the following observations of Griffiths LJ in the earlier case of ***Eagil Trust Co Ltd v Piggott-Brown*** [1985] 3 All ER 119, 122. Griffiths LJ said: "*I cannot stress too strongly that there is no duty on a judge in giving his reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if he shows the parties and, if needs be, the Court of Appeal the basis on which he has acted...*"

57. This court in the ***English*** case went on to say: *"It follows that, if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which are demonstrated that his recollection could not be relied upon."* [19]

58. At paragraph 20 of its judgment in the English case, this court held that the judge should explain why he has accepted the evidence of one expert witness but rejected the evidence of another expert witness. The same principles apply to other findings of fact. This court went on to observe that the explanation may be either the evidence of one witness is inherently more credible than that of another. It may simply be that the other was better qualified or manifestly more objective than the other. The judge it need not set out all the evidence all submissions in question provided that the basis of his reasoning is apparent. Thus, at paragraph 21, this court held: *"When giving reasons a judge will often need to refer to a piece of evidence or to a submission which he has accepted or rejected. Provided that the reference is clear, it may be unnecessary to detail, or even summarise, the evidence or submission in question. The essential requirement is that the terms of the judgment should enable the parties in any appellate tribunal readily to analyse the reasoning that was essential to the judge's conclusion."*

59. Those then are the principles which govern the question whether the trial judge has given adequate reasons. The next question is the practical question which arises where it is not immediately obvious from reading the judgment of the judge that sufficient reasons were given. That question relates to the process by which the appellate court determines whether the reasons which the judge gave were sufficient to support his conclusion. As to that process, the En lg ish case shows that the appellate court will examine the documents and evidence before the judge to

see what the issues before him were and what the evidence was. In other words, this court will look to see whether the judge's reasons, even if not expressed in terms or expressed clearly, can be deduced from those documents and the evidence. If the reasons are ones which can be deduced from those documents and the evidence, and if the judge's fmdings of fact were ones which he was entitled to make having regard to those documents and that evidence, this court will not accede to a challenge to the judgment on the grounds of insufficiency of reasons.

60. This may be illustrated by reference to what actually happened in the appeal in the ***English*** case. The case involved an action for damages for personal injury, namely a back injury said to have been sustained by slipping at work. There was an issue as to whether the claimant, Mr English, had a condition known as spondylolisthesis, that is, an 8mm forward displacement of a part of the vertebral column by reference to the remainder of the vertebral column below, before the accident occurred. The judge decided the case against Mr English. On appeal, there was an acute issue on that appeal as to the sufficiency of the judge's reasons because, as Sedley LJ had put it when giving permission to appeal, the judgment was a *"rambling and in places unintelligible document"*.

61. Before the judge there was a conflict of expert evidence on whether the spondylolithesis had occurred before or as a result of the accident at work. Mr McBride, Mr English's expert, said that a pre-existing condition had predisposed him to the injury which would not normally have occurred in the type of accident in question. The employers' expert, Mr Andrew, considered that this view was untenable because there was no medical precedent for spondylolisthesis in these circumstances. On the other hand, before the accident occurred, Mr English had had an x-ray, and the radiologist, Dr West, had reported that his lumbar-sacral spine was normal. The x-rays had not been preserved. Dr West gave evidence at the trial. He said that it was not inconceivable that he had missed spondylolisthesis but that it was unlikely that he would have done so.

62. The central issue as recorded by the judge was whether Mr English's condition with developmental in origin and therefore present before the accident or whether it was caused by the accident. The judge decided the case on the basis that it turned almost exclusively on a conflict between the evidence of the two medical experts. The judge said in his judgment that he was not going to set out the medical reports at length, but that "on a balance of probabilities" he preferred the evidence of Mr Andrew.

63. Mr English contended before this court that the judge had not given sufficient reasons for preferring one expert witness over the other. But this court proceeded to examine the issues in the case, as set out in the experts' reports and in the submissions made to the judge. This court concluded that, on a proper analysis of the issues, the issue for the judge was whether Mr English had spondylolisthesis before his slipping accident and Dr West had merely missed this on the X-ray examination, or whether he had sustained a spondylolisthesis in circumstances which were unrecorded and without known medical precedent. That issue was ultimately one for the judge and not the experts. It was outside the experts' area of expertise, and it was of an issue which had to be decided in the normal way on the balance of probabilities. The court concluded that the judge could have explained the issue and his process of reasoning in comparatively few words. The court expressed regret that he had not done so and said that it had taken the appellate process and the assistance of counsel who appeared at the trial to enable the court to understand the judge's reasoning. But, having done that, this court concluded that the appeal should be dismissed.

64. **LORD JUSTICE TUCKEY:** I also agree that the application for permission to rely on further evidence should be refused and I also agree that the appeal should be dismissed for the reasons given by my Lord and my Lady in their judgments.

Order: Application refused. Appeal dismissed.

MR P JANUSZ (instructed by Messrs Walker Morris) appeared on behalf of the Appellant.
MR N YEO (instructed by Messrs David Downton) appeared on behalf of the Respondent.