

HAVE I GOT A CONTRACT? IF I HAVEN'T, HOW MIGHT I GET PAID?

If both parties sign a contract, then it would be very difficult for one of them to dispute the existence of a binding contract. The grey area where there is no signed contract, or something which might be a contract has only been signed by one of the parties, was considered earlier in the year in a case called *Reveille Independent LLC v Antioch International (UK) Limited*.

This was a £1million-plus dispute about licensing a MasterChef US brand for a TV cook show. The parties contemplated signing heads of terms, with a detailed contract being subsequently negotiated and signed off. In the event, draft heads of terms, which said that to be binding they had to be signed by both parties, were only signed by one of the parties.

As ever, much turned on the particular facts of the case, but of practical significance is what the judge found on the evidence, namely:

'This is a familiar situation in which parties act commercially but in a way which sits uneasily with established principles of the law of contract. The parties did preparatory work before any contract could have come into effect because they judged that terms would in time be reached. A starting point therefore is the recognition that some work might be done without the parties entering into a contract...'

He then referred to an intensification of work, continued communications and a pattern of activity consistent with a licence having been granted, and the licensee not objecting when the licensor began sending invoices. The judge therefore held that the parties had agreed contractual terms by their conduct towards each other.

There was one other point made by the judge which merits bearing in mind. He found that even if he had not found that a contract existed, he would have made a quantum meruit or reasonable remuneration finding. He referred to a 1993 Court of Appeal judgment in which it was said:

'A theme that runs through our law of contract is that the reasonable expectations of honest men must be protected. It is not a rule or a principle of law. It is the objective which has been and still is the principal moulding force of our law of contract. It affords no licence to a judge to depart from binding precedent. On the other hand, if the prima facie solution to a problem runs counter to the reasonable expectations of honest men, this criterion sometimes requires a rigorous re-examination of the problem to ascertain whether the problem does indeed compel demonstrable unfairness'

The law surrounding quantum meruit claims is well established and, in summary, is as follows:

- Do the circumstances, as a matter of justice, impose an obligation to pay? Matters of 'conscionability' are relevant.
- Generally someone who is estimating, pricing or bidding for a contract is not entitled to remuneration for those efforts.
- However, if a party has received incontrovertible benefit or has acknowledged that services received were not intended to be given freely, an obligation to pay will likely arise.

Thus the courts will seek to overcome any play on legal niceties that the unscrupulous may seek to deploy in answer to a meritorious claim for services supplied.

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