

RESOLUTION

The Newsletter of ARBICON ADR Ltd

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The key members of the Arbicon Team are:

Ian J Purser
Director

Jon Nugent
Director

Jack Kirk
Senior Consultant

Mike Norrish
Senior Consultant

Tim Dyson
Senior Consultant

Derek Wakefield
Senior Consultant

Louise Steel
Marketing Manager

Can payment agreements made under duress be set aside and more money claimed?



Difficult times bring payment problems, "cash is king" and money is fought for on a more cynical level. There is always an element of politics involved with winning work and settling accounts to maintain continuous business relationships, subcontractors and contractors cannot afford to get into disputes or quibbles about terms. Prices are often agreed against the will of the subcontractor or contractor when starting work or settling accounts. So can the subcontractor or contractor argue that the prices agreed under duress are unfair, be set aside and a claim be brought against the paying party?

If an agreement is reached on payment under duress in the form of economic pressure it is possible to have that agreement set aside.

A typical instance is where a subcontractor completes his work and is short of money and is forced to accept a lesser sum. In ***D&C Builders V Rees (1966)*** an employer made his decorators accept a lesser sum with a written full and final document or no payment would be made. The decorators sued for the full amount later on and it was held that the threat of no payment was not justified and there was no consideration present, thus the decorators recovered the full sum due them. The court will seek to test if "accord and satisfaction" has been present if a lesser sum is to be accepted. This means that the payee must receive some benefit from the agreement such as early repayment. Other instances where the agreement may be binding are where a genuine dispute exists and part of a claim given up or a cheque sent in full and final settlement where there is no advice that it is accepted as part payment.

On the other hand duress can exist the other way round where a subcontractor demands more money from the contractor and forces the additional payment when he knows the contractor has little hope of securing a replacement contractor. This is a more difficult area as ***Williams V Roffey Bros & Nicholls (Contractors) Ltd (1990)*** demonstrates. A subcontractor under took carpentry work, part way through the contract the subcontractor threatened to stop work unless the contractor agreed to increase the contract prices. The contractor knew that if the subcontractor pulled off site it would cost considerably more to replace him so an agreement was made to increase the prices. On completion of the work the contractor refused payment reverting back to the original prices on the basis that he had been made to agree the increases under duress. The court held that the agreement was binding as the contractor had obtained a benefit by retaining the subcontractor by avoiding paying more for the work to be completed.

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or visit our website at www.arbicon.co.uk

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Payments under duress

Continued...

Another example of the smaller organization conducting similar pressure on the larger firm that was not successful is **Carillion Construction Ltd V Felix (2000)**. Felix were engaged to supply cladding, which fell into delay. Disputes arose concerning the likely final value of the work whilst work proceeded regarding variations. Felix refused to make deliveries until an agreement in respect of the account was reached. Carillion were under great pressure to complete the main contract and were concerned about LAD's being imposed by the employer, thus an agreement was reached expressed as full and final. Carillion expressed at the time of agreement that they considered it had been made under duress and later reverted back to the original terms when the work was completed. Felix sued and the court held that their actions were illegitimate and without justification and their claims failed.

The two cases **Williams V Roffey** and **Carillion V Felix** demonstrate the fine line between what the court will interpret as an unenforceable agreement reached through financial pressure.

Financial pressure itself is not sufficient to make an agreement unenforceable, coercion must also be present.

If you have been forced into any agreements regarding payment the Arbicon Team would be pleased to assess your case.

Please contact us at advice@arbicon.co.uk or call us on 01480 426560.

Arbicon ADR is now regulated by the Royal Institution of Chartered Surveyors (RICS)

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Arbicon ADR - Seminars

Contact us if you would be interested in any of our future seminars on managing your risks. Many have benefitted from these informative seminars since we started running them 3 years ago. Contact us on advice@arbicon.co.uk or call 01480 426560.



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