

Payment limitation periods for works and services

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In the recent case of *ICE Architects Ltd v Empowering People Inspiring Communities* [2018] EWHC 281 (QB), the English High Court considered whether the wording of the payment provisions in a contract rebutted the presumption that a cause of action in respect of payment for work and services arises when the work and services have been completed.

The law prescribing limitation periods in the United Kingdom is set out in the Limitation Act 1980 (the "Limitation Act"), which requires that a claim must be brought within the prescribed time period from the date on which the cause of action accrued, to avoid the claim being time-barred. For example, section 5 of the Limitation Act provides a limitation period of six years for actions in respect of "simple" contracts (i.e. contracts other than in the form of a deed).

In an action for payment for works and services, the cause of action arises on completion of the work, unless the parties have agreed otherwise. In the case of *ICE Architects Ltd v Empowering People Inspiring Communities*, which was a simple contract, the central question was whether the default position had been displaced by the terms of the contract.

Key facts

The Respondent ("EPIC") appointed the Appellant ("ICE") by letter on 10 July 2007 as the architects for a housing project being developed by EPIC. The letter included the following payment provision:

"You [ICE] will invoice EPIC on a monthly basis for work completed to date... EPIC Ltd will endeavour to make payment within 30 days of receipt (unless otherwise stated)."

In April 2009, ICE issued an invoice for its services provided in 2007 under the terms of the letter. In May 2015, ICE brought civil proceedings against EPIC for the balance of the invoiced amount. In its defence, EPIC argued that ICE's claim was time-barred pursuant to section 5 of the Limitation Act. ICE argued that the cause of action did not accrue until 30 days after receipt of the invoice because this is what had been agreed in the parties' payment provisions. The court dismissed ICE's arguments and ICE appealed the decision.

Decision on Appeal

The Court dismissed the appeal and held, amongst other things, that:

- The default position in a claim for payment for works or services is that the cause of action arises at the time of completion of the work. The judge considered the leading authority of *Coburn v Colledge* [1897] 1 QB 702, in which Lord Esher MR stated that in the case of a person:

“who does work for another person at his request on the terms that he is to be paid for it, unless there is some special term of the agreement to the contrary, his right to payment arises as soon as the work is done.”

- There was nothing in the parties' payment provisions to suggest that ICE's entitlement to payment did not arise when the work was done. Therefore, the judge did not accept that the parties had agreed that ICE's entitlement to payment did not arise until 30 days after receipt of the invoice.
- The judge concluded that a reasonable person in the parties' position would have understood that the provision relied on by ICE concerned only the process of billing and payment. It was 'common sense' that a design project of this nature required an agreement on the mechanics of invoicing and payment.
- The judge also endorsed the comments of Lord Neuberger MR in *Legal Services Commission v Henthorn* [2011] EWCA Civ 1415 that, save where it is the essence of an arrangement between the parties that a sum is not to be paid until demanded:

“clear words would normally be required before a contract should be held to give a potential or actual creditor complete control over when time starts to run against him.”

Comment

The Court has confirmed that the limitation period of six years in a cause of action for payment for work and services under a simple contract commences from when the work and services were completed and not from the date of invoicing. However, in the wider world of contracting there are a number of other possibilities when the limitation period commences.

For example, a contractor's entitlement to payment may, by an express contractual provision, be made conditional upon the contract administrator issuing a certificate of the amount that the contractor is entitled to be paid. Money will, therefore, be due to the contractor because a certificate has been issued and not because the contractor has performed work that may require the contract administrator to issue a payment certificate. A contractor's cause of action will, in such cases, arise when the certificate of the contract administrator is given or ought to have been given.

Further, there may be two causes of action and two limitation periods where a contract contemplates a contractor being paid on an interim basis, as relevant work is performed, and on completion. The first is the limitation period that commences upon the contractor becoming entitled to an interim payment, and the second is the limitation period that commences upon the contractor becoming entitled to a final payment. Both relate to the performance of one tranche of work, against which the contractor is entitled to a single, maximum amount.

The decision in *ICE v EPIC* is a timely reminder of the need to consider carefully the application of limitation periods when negotiating contracts and when a dispute arises. In construction contracts, the position is often more complex, as the contractual payment provisions may influence when the cause of action accrued, and consequently when the limitation period has commenced.

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