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**REACHING THE LIMIT – DELAY IN INVOICING YOUR WORK MAY BAR RECOVERY
THROUGH THE COURTS**

By Sam Cheesbrough, Barrister, Nicholas Woolf & Co

In ICE Architects Limited (“ICE”) v Empowering People Inspiring Communities (“EPIC”) [2018] EWHC 281 (QB), Lambert J considered when a cause of action accrues in respect of a claim for payment arising out of work and services.

Background

In 2008, ICE provided various design services to EPIC pursuant to the terms set out in a letter dated 10th July 2007. That letter stated, under the heading “*Basis of Payment*”, that ICE would:

“...invoice EPIC on a monthly basis for work completed to date. The basis of payment proposed in the appendix to the document described above is acceptable. EPIC Ltd will endeavour to make payment within 30 days of receipt (unless otherwise stated)”.

An invoice relating to the 2007 services was issued by ICE on 23rd April 2009 for services provided under the terms of the letter. On 21st May 2015, ICE issued a claim against EPIC for the outstanding invoiced sums. When challenged that they were out of time to make such a claim, ICE argued that the cause of action accrued 30 days after the date of the invoice.

At first instance, Parfitt J found that the date on which the cause of action accrued was the date on which the relevant design work had been completed; 2008. As more than six years had passed between that date and the issue of the claim, the claim was statute barred.

The Appeal

Lambert J, sitting in the High Court, dismissed the appeal for the following reasons:

1. The presumption is that a cause of action in respect of payment for work and services arises when the work and services have been completed (*Coburn v Colledge [1897] 1 QB 702*).
2. A reasonable party in the position of the parties would have understood the words in the letter to be an agreement concerning the process of billing and payment. Nothing in the language of the letter suggested that the presumption would be rebutted, and that ICE would only be entitled to payment 30 days after the invoice was served.
3. Lord Neuberger MR’s *obiter* statement in *Legal Services Commission v Henthorn [2011] EWCA Civ 1415* was accepted, and therefore that clear words are needed if the timing of the accrual of the cause of action in an action for work or services is to be displaced. There were no such clear words in the letter.

4. A factor in construing the agreement between the parties is whether the *quantum* of payment can be determined at the time that the work or services are completed. If the *quantum* is required to be determined by a third party (as in *Henry Boot Construction Limited v Alston Combined Cycles Limited [2005] EWCA Civ 814*) or following further action, such as taxation (as in *Henthorn*), then the presumption may be displaced and the cause of action may accrue at a later date. This did not arise in respect of the invoice in this case.

Conclusion

This case reaffirms the importance of timing when determining when a person is entitled to claim for work and services. There is a distinction between the date on which a cause of action accrues, and the date on which a party may be procedurally entitled to issue a claim for outstanding sums.

The position generally adopted by parties (whether compelled by statute, as in the case of solicitors, or by agreement) is that a party will only be required to pay a debt after an invoice has been issued or served on them and a period of time (often 30 days) has been allowed to make payment. This acts as a procedural bar on the invoicing party's ability to issue proceedings for an outstanding debt; unless the invoice is served, there is no obligation on the paying party to pay the outstanding sums, and so no claim can be issued against them.

Unless otherwise agreed in clear language, however, the cause of action in respect of the debt will accrue on the date that the work and services have been completed. The result is that if a party leaves more than six years to serve an invoice in respect of such work, they may find themselves statute barred (and unable to sue on the debt) before the obligation on the other party to make payment arises.

It is therefore important to ensure that the dates on which work and services are completed are clearly identified, and that parties invoice for such work as soon as reasonably practicable after that point. Alternatively, parties need to ensure that a clause is inserted into the contract that clearly sets out when a cause of action will accrue.

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