



Neutral Citation Number: [2024] EWHC 466 (KB)

Case No: QB-2022-002934

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/03/2024

Before :

DEPUTY MASTER SABIC

Between :

(1) COLTECH RECRUITMENT LIMITED
(2) 1ST PS LIMITED

Applicants

- and -

CERA CARE LIMITED

Respondent

Jonathan Cohen KC and Stuart Sanders (instructed by **Sherrards Solicitors LLP**) for the
Applicants

Lesley Anderson KC and Emily Husain (instructed by **Keystone Law Limited**) for the
Respondent

Hearing dates: 31 January 2024

JUDGMENT

Deputy Master Sabic:

Introduction

1. This is an application for summary judgment (dated 18 August 2023) made by the Claimants/Applicants, Coltech Recruitment Ltd ('CRL') and 1st PS Ltd ('1PS') against the Defendant/Respondent ('Cera Care Limited') in respect of recruitment service fees for 23 temporary workers ('TW') which forms the greater part of the overall claim against the Respondent. The Respondent stopped paying invoices for the TWs from December 2021. The Respondent does not dispute the period of recruitment, the price for providing the recruitment or the quality of the recruitment service.
2. The Respondent's position is that at all material times its contractual counterparty was Coltech Consulting Limited ('CCL') and not CRL. Thus, the Respondent asserts, the debt is not payable to CRL but to CCL. The Respondent's position is that the present application should be dismissed because (in summary terms) this is an '*unresolved issue which requires extrinsic evidence to resolve, including evidence of the parties' subjective intentions, namely the identity of the Respondent's contractual counterparty.*'¹
3. Further, the Respondent asserts that it has a claim against CCL and not the Applicants, for inadequacy of service provided by CCL on a software project, so that it could set-off the amount owed to it for recruitment services, which necessitates a trial.
4. I was told at the hearing of this application that at 8:56pm on 30 January 2024, the day before the hearing, the Respondent issued a claim against CCL in respect of the above.
5. It is further relevant, by way of introduction, to note that CCL provided consulting services to the Respondent for a number of projects and a great deal of documentary

¹ R skeleton argument at [2].

evidence was produced at the hearing as to the contractual dealings between CCL and the Respondent.

Factual Background

6. The relevant documented contractual background can be summarised as follows.
 - i) The Respondent entered into a framework agreement, the Contingent Worker Contract ('CWC') on 20 October 2020 for the provision of the '*contractor or contingent worker*', defined as '*Consultancy*' in the CWC. The parties to the CWC stipulated that the 'Agency' in the CWC was '*Colltech*' and the 'Client' was '*Cera Care*'. The fees were defined as '*the fees payable by the Client to the Agency resulting from the Engagement of one or more Consultancy at the rates agreed by the Parties in writing*'.
 - ii) The '*Placement*' was defined in the CWC as '*the contractual agreement between the Client and the Agency for each specific Assignment for a Consultancy to provide Services, as set out within the IPS portal.*' It is immediately apparent that the CWC specifically provided for the Placement to constitute a further contractual agreement between the contracting parties, in respect of the engagement of each TW. Further, the CWC defined '*Services*' as '*the specific services to be provided by the Consultancy to the Client in accordance with this agreement and as set out in the Placement*'. CWC contained a logo on the top right-hand side of each page with the words '*Coltech Consulting*'.
 - iii) From January 2020, CRL used a service known as "1PS" for its administration. 1PS operated an electronic platform, used to generate contractual agreements

for the recruitment of individual workers ('the Portal'). When the Respondent wished to engage a particular worker, it logged in to the Portal and was presented with a page, which incorporated the essential contractual details of the recruitment offer. The page specified that the offeror (described as 'the Agency') was CRL and the offeree (described as 'the Client') was 'Cera Care Limited' in respect of every TW in issue in this action. The page specified in two places that the 'Agency' was "*Coltech Recruitment Ltd*".

7. For completeness, I was provided with a great deal of evidence at the hearing of this application including the following:
 - i) Bundle 1: Main Bundle, consisting of 637 pages.
 - ii) Bundle 2: Exhibits consisting of 646 pages.
 - iii) Updated Correspondence Clip consisting of 32 pages.
 - iv) Skeleton Argument for the Applicants dated 29 January 2024.
 - v) Skeleton Argument for the Respondent, undated.
 - vi) Agreed Authorities Bundle.
8. I am very grateful to all counsel and the wider legal teams for their assistance and care with which they prepared and presented their cases in this application.

Legal Principles

9. When assessing the prospects of success of the Respondent's defence at trial and therefore, in order to determine this application for summary judgment, it is necessary to have in mind the following legal principles which were drawn to my attention and

summarised by the parties in their helpful skeleton arguments. The legal framework was not in dispute.

10. Approach to contractual construction: *Lewison on the Interpretation of Contracts*, 8th edition, sets out at 10.15 that where a written contract identifies the names of the parties, that is the end of any inquiry. No extrinsic evidence is admissible to contradict what the contract says:

although evidence is admissible to identify parties to a contract, where the parties are specifically named in a written contract, evidence is not admissible for the purpose of showing that others (who were not named) were also parties to the contract. Accordingly, where the terms of an agreement unequivocally and exhaustively identify the parties to it, it is impermissible to seek to contradict it.

11. It is therefore only where the written agreement discloses some ambiguity that external evidence is admissible to aid its construction.
12. Even if there is ambiguity, the Court must continue to apply proper principles of construction of the agreement as a whole, in particular, the need to take an objective approach. In *Estor Ltd v Multifit (UK) Ltd* [2009] EWHC 2565 (TCC), cited in *Lewison* at 10.18, Akenhead J put the matter in the following way:

Where, as here in this case, one can not ascertain from the offer and acceptance who the employing party was, it must be legitimate to consider what the parties said to each other and what they did in the period leading up to the acceptance in order to determine who that party was intended to be. It was accepted, properly, by both Counsel, that in determining a factual issue such as this, the court needs to adopt an objective approach and to consider the facts known to both parties and what was said orally or in writing between the relevant individuals. The fact that one individual went to or left a meeting, believing privately that the contract was to be with a particular party, would be of little or no weight or assistance in determining who the contract was with, unless there was reliable evidence that that belief was expressed to others at the meeting.

13. Approach to Summary Judgment in Construction Cases: *Easycor Ltd v Opal Telecom Limited* [2009] EWHC 339 (Ch) at [15] (subsequently endorsed on countless occasions and appearing in the White Book at 24.2.3) includes as its seventh proposition:

it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it - ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 72

Analysis

14. I start by reminding myself of the relevant principles contained in CPR24.3 that summary judgment may be given if the Respondent has no real prospect of succeeding on their defence and there is no other compelling reason why the case or issue should be disposed of at a trial.
15. In my judgment, the key issue in this application is the correct construction of the term ‘Agency’ in the relevant contract(s). This point of contractual construction is decisive in the application of the relevant legal test, namely whether the Respondent has any real (as opposed to fanciful) prospect of defending the claim at a putative trial.
16. The Respondent’s position in this application is that there is an ambiguity in the identity of the contracting party, more specifically, ambiguity in the identity of the correct Coltech entity. On the Respondents’ case, the ambiguity arises principally on account of the following documentary evidence:
- i) CWC logo which reads ‘*Coltech Consulting*’.
 - ii) CWC definition of Agency as ‘*Colltech*’.

- iii) Evidence such as that contained at [522] – [526] of the Exhibit bundle, which is correspondence between Matthew Gilson, Director with an email signature containing a link to *Coltech-consulting.com* and potential TW to be provided to the Respondent.
- iv) Other evidence which may become available at trial.

17. Taking each of these in turn:

- i) The Respondent accepted at the hearing that the existence of the logo with the words ‘*Coltech Consulting*’ was irrelevant. In my judgment, this is plainly right. Brand names cannot constitute a company’s legal entity. Further, the appearance of the words ‘*Coltech Consulting*’ does not positively support the Respondent’s case, which is that its contractual counterparty was Coltech Consulting Limited. I therefore place very little weight on this factor when assessing the realism of the Respondent’s defence.
- ii) The CWC definition of Agency as ‘Colltech’ is similarly not supportive of the Respondent’s case. The issue between the parties does not turn on the correct spelling of Colltech - both parties are in agreement that a Coltech legal entity was a party to the contract. Thus, the incorrect spelling is immaterial. The nature of the disagreement between the parties centres on the question of which Coltech entity was the true contractual counterparty (defined as the Agency). Analysis of the CWC and the Placement contract contained in the Portal leads to the following unambiguous answer. The CWC definition of Agency is more general (Coltech) than the specific definition of Agency in the Placement, namely CRL. If the CWC and the Placement contracts are to be read consistently and

coherently with each other, there is only one definition of Agency and it follows that the general Coltech is defined further and consistently in the Placement as Coltech Recruitment Limited, CRL. For these reasons, I am not persuaded that point ii. above can realistically advance the Respondent's case.

iii) The evidence contained at [522] – [526] of the Exhibit bundle is correspondence which did not pass between the parties and for that reason it also cannot realistically advance the Respondent's case.

iv) At the hearing I was told by Ms Anderson KC for the Respondent that evidence which may realistically come to light at trial is likely to be correspondence between the correct Coltech entity and the individual TW which would or could explain the correct identity of the contracting parties. For the same reasons as set out above, I do not consider that documents which did not pass between the parties would be of assistance to the Court. They are highly unlikely to be capable of throwing a different complexion on the point of construction and in my view, they are therefore not likely to be capable of realistically advancing the Respondent's case.

18. A striking feature of this case was that there was no documentary evidence before the Court which clearly and positively supported the Respondent's case. It is important to bear in mind that the Respondent's case is not simply that there is ambiguity in the identity of the contracting party. The Respondent's positive case is that its counterparty was 'Coltech Consulting Limited'. However, and contrary to the submissions made by the Respondent², CCL's name does not appear in any of the relevant contracts (neither

² See for example Respondent's argument at [3].

the CWC nor the Placement). There is therefore, in my view, no realistic evidential basis in support of the Respondent's defence to the part of the claim which is subject to this application.

19. The Applicant's case, by contrast, is clear and straightforward. The CWC made specific reference to the Placement, which was agreed by the parties to have binding contractual effect. Whilst it is notable that the definition of Agency in the CWC is not identical to the definition of Agency in the Placement (*Colltech vs Coltech Recruitment Limited*), the identity of the parties is tolerably clear. Sensible and consistent reading of the two interrelated contracts leads to a singular and clear identification of the Agency as CRL. Further, the principle that specific written terms relating to a particular contract will prevail over generally incorporated umbrella terms, is materially supportive of the Applicants case³. Therefore, on the plain reading of both contracts, there is, in my judgment, no documentary ambiguity in the definition of Agency as between the contracts. Thus, the key question in this application, namely who is the Agency, is determined by the definition adopted by the parties in writing, which is plainly CRL.
20. It follows that I do not consider that any oral or other extrinsic evidence would be admissible at trial to determine the identity of the contractual parties (*Shogun Finance Ltd v Hudson* [2004] 1 AC 919 at [49]).
21. However, if I am wrong about the above and there is or could realistically be an ambiguity, it is one that cannot realistically be resolved in the Respondent's favour for the following brief reasons. First, and as set out above, there is no documentary evidential basis for the proposition that the counter contractual party was CCL. Second,

³ Lewison at 9.101 and the authorities cited therein.

the Respondent does not dispute that CRL was the Agency in the Placement contracts, which agreement was plainly intended to be contractually binding on the parties. Third, the evidence of post contractual dealings between the parties (as opposed to those not passing between the parties), even if admissible, is highly supportive of the Applicant's case: see for example [305] of the Exhibits bundle, a screen shot of the Portal, with the Agency defined as CRL and the Client as Cera Care Limited.

22. The Respondent urged me to consider the terms of the CWC as the '*primary contractual document*' and that the Applicants' case rested on the Placement being an independent contractual agreement. In my judgment, both contracts need to be read together and consistently with each other. I do not see how the primacy of the CWC assists the Respondent's position in circumstances where there is no documentary evidence which positively supports its case that its contractual counterparty was CCL.
23. In these premises, I do not consider that reasonable grounds have been shown for believing that a fuller investigation into the facts of this case would add or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63.
24. Finally, and in relation to the possibility of a counterclaim that the Respondent asserts it has or could have at trial against CCL, I do not consider that this constitutes a reason, let alone a compelling reason, to permit the case to proceed to trial. I was given extremely limited information on the details of the claim against CCL and there is nothing to prevent the Respondent from pursuing its claim against CCL, if it so wishes. The grant of this application leaves the merits of that separate claim unaffected. Indeed, Ms Anderson KC did not press the point in oral submissions and for the avoidance of

doubt, I am not persuaded that the possible set off against a non-party in these proceedings satisfies the ‘compelling reason’ test in CPR 24.3(b).

Conclusion

25. This application raises a short point of construction – who is the Agency in the relevant contracts? Applying the 7th principle in *Easyair* [2009] EWHC 339 (Ch), I am satisfied that I have before me all the evidence necessary for the proper determination of this key question and that the parties have had an adequate opportunity to address it in argument. There is a distinct lack of documentary evidence of sufficient probity which was identified by the Respondent which could or would put the factual matrix in another light, which is likely to exist and which can be expected to be available at trial.
26. For the reasons set out above, the question in this application, namely who is the Agency, falls to be determined in the Applicants’ favour because that is plainly what the parties stipulated in the relevant written contracts. The Respondent’s defence in relation to this part of the claim has no realistic prospect of success.
27. In the premises, I allow the application and grant summary judgment against the Respondent.