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THE INSIDE VIEW WITH VINDEN



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VINDEN HAS CELEBRATED OVER 22 YEARS OF WORKING FOR CLIENTS IN THE CONSTRUCTION AND PROPERTY MARKETPLACE AND CONTINUES TO GO FROM STRENGTH TO STRENGTH.

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Regent House



THE VINDEN PARTNERSHIP

Working with an extensive range of clients within both the public and private sectors, The Vinden Partnership (Vinden) offers the construction industry a huge variety of services, delivered by an exceptionally talented and experienced team.

Here we present some of the highlights from articles The Vinden Partnership has produced this year to date.

From its offices in Greater Manchester, Nottingham and central London the company undertakes education, residential, industrial, affordable housing, office, retail and health sector projects delivered to a wide range of clients and project stakeholders.

Vinden has celebrated over 22 years of working for clients in the construction and property marketplace and continues to go from strength to strength.

All clients are treated as “life time” clients and its priority, regardless of which of the many services are being provided, remains the same; that is to ensure the highest levels of client service and satisfaction are achieved at all times.

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A group of children are playing musical chairs in a grassy field. In the foreground, a girl in a pink and white striped shirt and purple pants is running towards the camera. To her left, a girl in an orange shirt and yellow pants is also running. In the background, other children are visible, some standing and some sitting on white folding chairs. The scene is bright and sunny.

MUSICAL CHAIRS – COST RECOVERY IN ADJUDICATION

When I was a child, not so long ago (no sniggering please), my favourite game was musical chairs. I loved waiting for the music to stop and then dashing for one of the vacant chairs. Oh, what fun we had. I never knew when the music would stop and which chair would be free. I never thought for one minute that I would still be playing a version of that game so far down the road into my professional career. What am I talking about? Well, what I am referring to is yet another twist in the “recovery of inter-party costs in adjudication” road.

You will recall from previous articles that the Late Payment of Commercial Debts (Interest) Act 1998 ("LPCDIA") includes the right of a Claimant to recover its reasonable costs above the fixed sums of compensation included in the act. This provision led to the start of referring parties claiming debt recovery costs through this piece of legislation in adjudication cases, with varying degrees of success.

Then came the judgement in Lulu Construction Ltd v Mulalley & Co Ltd [2016] EWHC 1852 (TCC) ("Lulu") which potential claimants in adjudication had been waiting for. This judgement supported the concept of obtaining inter-party cost recovery in adjudication under the LPCDIA where the contract failed to include an adequate remedy for the payment of interest. The judgement in Lulu, which addressed a jurisdictional issue on whether an adjudicator could answer a question on costs recovery rather than looking at the substantive law on the issue, had many people convinced that this would mark the start of parties successfully bringing claims in adjudication which included an element for cost recovery, where the underlying contract had failed to include an adequate remedy for dealing with the recovery of interest, and both interest and costs recovery were claimed under the LPCDIA.

Now it appears that the chairs have been shuffled and the prospects for the recovery of inter-party costs in adjudication allowed in Lulu has now been slain by an unreported decision of The Technology and Construction

Court in Enviroflow Management Ltd v Redhill Works (Nottingham) Ltd. Enviroflow was engaged as a sub-contractor by Redhill to provide internet installation works. The Parties fell out and Enviroflow commenced an adjudication claiming payment from Redhill and an order for recovery of its reasonable costs under the LPCDIA. The adjudicator found in Enviroflow's favour and the decision awarded Enviroflow a sum of £81,000 plus interest, together with £14,900 in costs under the LPCDIA. The adjudicator also decided that Redhill should pay his fees. Redhill didn't pay Enviroflow and Enviroflow commenced court proceedings and applied for summary judgement.

The judge had little hesitation in awarding payment of the principal sum of £81,000 and interest to Enviroflow but dismissed its application for costs recovery under the LPCDIA for the following reasons.

Although section 5A of the LPCDIA provided for an implied term in a contract that a successful party was entitled to its costs of recovering a debt, section 108A of the amended Housing Grants Construction and Regeneration Act 1996 provides that, where a construction contract had been referred to adjudication, the costs of an adjudication can only be awarded where such a provision has been made in writing.

Accordingly, whilst Enviroflow was entitled to seek its reasonable costs by reason of an implied term from the LPCDIA, such an implied

term was caught by s.108A of the 1996 Act and was ineffective unless an agreement had been made in writing. It was common ground that no agreement had been made in writing. Thus, the adjudicator had had no jurisdiction to make a costs award and Enviroflow was awarded judgment of its claim, less the sum awarded, in the reasonable recovery of its costs.

So, at least for the time being, it appears that we have some clarity on the position. There is no right to claim inter-party costs where the underlying contract has failed to include an adequate remedy for dealing with the recovery of interest, and both interest and costs recovery are claimed under the implied terms of the LPCDIA. But will the Court of Appeal decide to shuffle the chairs again if this issue comes before them? We will just have to wait and see.

Peter Vinden is a practising Arbitrator, Adjudicator, Mediator and Expert. He is Managing Director of The Vinden Partnership and can be contacted by email at pvinden@vinden.co.uk. For similar articles please visit www.vinden.co.uk.





THE VINDEN PARTNERSHIP LAUNCH DEFECT DETECTION SERVICE

We are pleased to announce The Vinden Partnership has launched a Defect Detection Service in response to increased numbers of new house purchasers approaching us for independent assistance in identifying defects and advising them on their resolution.

Clients can either engage Vinden pre-completion to “snag” a property prior to finalisation of the purchase or post-completion where a house builder is reluctant or unwilling to attend to rectify defects and a dispute has or is about to arise.

We will quote a fixed lump

sum, starting from £350 plus VAT for surveying a property and providing a formal report listing a full schedule of defects. The inspection includes an aerial roof survey for low rise properties in order to identify any potential defects in those areas that are difficult to access. We are able to utilise thermal imaging technology as part of our inspection in an effort to identify whether thermal insulation has been sufficiently installed within the cavity walls.

An additional top-up fee is payable if the client wishes to have the schedule priced. Discounted hourly expert rates

are also offered to clients who unavoidably end up in formal dispute with their house builder.

Our Defect Detection Service is not restricted to the residential sector only. We are able to extend this service to commercial premises and would be happy to provide a free quotation upon receipt of the property details.

For further information or a quotation, email:
survey@vinden.co.uk



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MARKET CONTRACTS BUT TRADING STILL HIGH

The latest release from Office for National Statistics (ONS) shows that the construction market has contracted once more in the three months to July.

This is the fourth three-on-three month consecutive fall, and although this may raise eyebrows, it is worth remembering that figures are still trading 21% over the lowest figures from 2013.

Figures for the three months to July, released by the ONS this week, show that the construction market has contracted by 1.2%. Construction output also fell month-on-month, falling by 0.9% in July 2017, predominantly driven by a

1.4% fall in all new work.

Trends show that the biggest declines were shown in the repair and maintenance arenas, with a 1.8% drop, and new work dropping to one per cent.

Peter Vinden, Managing Director of the Vinden Partnership has reacted to the figures with cautious optimism: "Although the latest ONS figures show a continued drop in output, we must remember that it is still trading 21% above the lowest points in 2013, and construction is proving to be a resilient sector.

"However, the most concern should be reserved for house

building, where, despite the government push to address the looming housing crisis, figures have once again dropped, with private housing falling by £95M.

"Social housing is growing, contributing some £18M to industry output and this area will only continue to strengthen."

"The boat may have been rocked by political uncertainty and economic forecasting, but construction is a resilient sector, and we can expect it to recover with government support and investment."



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