

Construction
Case Law Update
Rosling King LLP



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The dispute between parties concerned a Joint Venture Agreement (the “JVA”) entered into on 31 August 2011 in relation to the development of a property situated at St Lukes Court, Willerby, Hull (the “Property”).

The Facts

Nordic Insulated Doors Ltd (the “Claimant”) was owned and controlled by Mr P J Finn and Land Resources Ltd (the “Defendant”) was owned and controlled by Mr Frank Maguire and his wife.

The JVA, which was drawn up by the parties without legal advice, prescribed that the Claimant would provide the Defendant with expertise to renovate the Property and the Defendant would, in return, finance the project. The dispute between the parties was in respect to the split of profits made on the sale of the Property.

Clause 6 of the JVA provided that the agreement would “finish on 01/08/2012 and after that date... [the Claimant would] have no interest in the site”. Peter Smith J described this as a “surprising provision” since it conferred a high risk to the Claimant “which could carry out a lot of work to facilitate a sale which would nearly be ready for completion... but then be denied any entitlement whatsoever to the ensuing profits to which it had participated because the fruits arrived after 1st August 2012”.

Mr Finn was, however, the draftsman of this clause and, when giving evidence, accepted that he fully understood that after 1 August 2012 the Claimant would have no claim in respect of the JVA.

Shortly before the termination date of the JVA, the Claimant proposed that the life of the JVA be extended for a period of 3 months until 1 November 2012 to allow time for additional works which required further planning permission and building regulation approval to be secured. The Claimant sought confirmation of the proposed extension several times but the Defendant did not respond. By July 2012, the relationship between the parties had broken down and it was accepted that the Defendant was determined to finish the JVA according to its tenor.

On the facts, the Defendant was not found to have intentionally slowed the progress of the project. Indeed, a purchaser had been found and the Defendant was in a position to exchange and complete prior to 1 August 2012 but the purchaser did not have sufficient funds. Ultimately, the project did not complete by 1 August 2012 and the Claimant was denied a share in the proceeds of sale.

The Claimant brought proceedings against the Defendant alleging that the JVA had been extended and it was therefore entitled to a share of the proceeds.

The Decision

On the evidence, Peter Smith J found that there was no point in extending the JVA for a further 3 months in the hope that something might turn up. Peter Smith J considered the Claimant to have been under no illusion that it was not going to receive confirmation from the Defendant that the JVA would be extended. He also refused to accept that the proposed 3



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month extension would have been sufficient time to obtain the planning permissions and building regulation approval necessary to carry out the proposed additional works. The claim was considered by Peter Smith J to have been “invented to try and terrify the Defendant into paying up” and, accordingly, the Claimant failed to make out a claim to be entitled to a share in the proceeds.

Conclusion

This decision of the High Court is illustrative of the potential pitfalls of entering into Joint Venture Agreements without first obtaining proper legal advice.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.