



Is an invoice containing a list of work completed but without a mathematical breakdown a valid application for payment?

This question was addressed in the TCC's recent decision of *Jaevee Homes Limited v Mr Steve Fincham (trading as Fincham Demolition)* [2025] EWHC 942. The TCC also considered the extent to which WhatsApp messages can form a contract in the absence of certain agreed terms.

Key takeaways:

- Informal WhatsApp messages can constitute a contract.
- Failure to agree on the duration, start date and payment terms applicable to works do not preclude formation of a contract.
- Payment applications that only list the works completed can constitute a valid application for payment despite no mathematical breakdown being provided.

Background and procedural history

Developer, Jaevee Homes Limited (the “**Claimant**”), engaged Steve Fincham (trading as Fincham Demolition) (the “**Defendant**”) for demolition works (the “**Works**”) at a site in Norwich.

The Works commenced in late May 2023.

A dispute arose concerning the amount of work carried out and the sums due to the Defendant following receipt of four invoices in the sum of £195,857.50 plus VAT, (together, the “**Invoices**”). Of those Invoices, only £80,000 had been paid by the

Claimant which, on the Defendant's case, left £125,650.38 payable (the “**Outstanding Sum**”).

The Claimant purported to terminate the Defendant's employment, and the Defendant served a statutory demand on the Claimant for the Outstanding Sum. An injunction restraining the presentation of a winding up petition was granted in the Claimant's favour, and the Defendant was ordered to pay the Claimant's costs of £18,000 (the “**Costs Order**”). The Defendant failed to pay the Costs Order.

In a further attempt to recover the Outstanding Sum, in July 2024, the Defendant commenced an adjudication against the Claimant on the basis of no payless notices being served in respect of the Invoices (the “**Adjudication**”).

In the adjudication, the main issues in dispute were whether the Invoices were valid payment applications and what terms had been agreed between the parties (the “**Contract**”). This is discussed in more detail below but, in summary, the Adjudicator found that WhatsApp messages exchanged on 17 May 2023 concluded the Contract and that various documents including a formal subcontract, issued by the Defendant after that date and later WhatsApp messages did not form part of the Contract.

By a decision dated 11 September 2024 (the “**Decision**”), the Adjudicator found in the Defendant's favour and ordered the Claimant to pay the Outstanding Sum to the Defendant along with interest and compensation for late payment. The Claimant was also ordered to pay the Adjudicator's fees.

The Claimant failed to comply with the Decision and the Defendant issued Part 7 proceedings to enforce the same. Summary judgment was granted and after setting off the Costs Order, the Claimant was ordered to pay the net sum of £137,472.12 to the Defendant (the “**Enforcement Order**”).

The Enforcement Order was not complied with and the Claimant started Part 8 proceedings to challenge

HAWKSWELL KILVINGTON LIMITED

2nd Floor, 3150 Century Way, Thorpe Park, Leeds LS15 8ZB | 28 Queen Street, London EC4R 1BB
Tel: 0113 543 6700 | Fax: 0113 543 6720 | enquiries@hklegal.co.uk | www.hklegal.co.uk



**HAWKSWELL
KILVINGTON**

Specialist Construction Solicitors

Construction Law Update

the Decision (and thereby the Enforcement Order). Unusually, the Claimant also applied for a stay of its own proceedings for three months on a “*general basis*” (the “**Application**”). The Claimant argued, amongst other things, that Part 8 proceedings were unsuitable because the parties were in dispute regarding the commencement date of the Works.

The Application was dismissed given the core question to be determined was that of contract formation, and the question of start date had no bearing on that. That being the case, the current proceedings were deemed suitable for determination under Part 8 of the Civil Procedure Rules.

This case concerns the outcome of the Part 8 proceedings.

Held

The Judge, Mr Roger ter Haar KC, granted two declarations in the Defendant’s favour. This is discussed in further detail below.

When, how and on what terms had the parties entered into a contract?

The Judge found that the Contract was formed by emails and WhatsApp messages exchanged between April 2023 and 17 May 2023. Such messages established the Defendant’s entitlement to issue monthly payment applications (at any stage during each monthly cycle) which became payable 28 to 30 days following the Claimant’s receipt of an invoice.

The fact that emails were sent to the Claimant using a different company name did not prevent the Contract from forming. Viewed objectively, the Contract was between the Defendant and the Claimant.

The Judge also found that failure to agree on the duration, start date and payment terms for the Works were not essential terms which precluded a concluded contract.

Were the Invoices valid applications for payment?

As the Contract made no provision for how monthly instalments were to be calculated, the Judge concluded that the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended) applied.

The Judge found that the Invoices sufficiently set out the basis on which the sums claimed were calculated despite such Invoices only listing the Works completed and there being no mathematical breakdown to the overall sum claimed or valuation of each item.

On further analysis, however, the Judge found that only three of the four Invoices were valid. One invoice was invalid because it was the second invoice issued that month, and the Defendant was only entitled to submit one invoice per month.

Analysis

While failure to agree the duration, start date and payment terms for works is not essential to concluding a contract, parties should always try to agree such provisions to promote certainty, and to avoid costly disputes later down the line.

The Court’s analysis of the contents of the invoices in this case will also be of interest to parties operating in the construction industry where validity of payment applications is a hotly contested topic in payment disputes.

This article contains information of general interest about current legal issues, but does not provide legal advice. It is prepared for the general information of our clients and other interested parties. This article should not be relied upon in any specific situation without appropriate legal advice. If you require legal advice on any of the issues raised in this article, please contact one of our specialist construction lawyers.
© Hawkswell Kilvington Limited 2025

HAWKSWELL KILVINGTON LIMITED

2nd Floor, 3150 Century Way, Thorpe Park, Leeds LS15 8ZB | 28 Queen Street, London EC4R 1BB
Tel: 0113 543 6700 | Fax: 0113 543 6720 | enquiries@hklegal.co.uk | www.hklegal.co.uk