



Construction Law Update

Being realistic: Court adopts common sense, commercial view and holds Payment Application valid

The proceedings in *1st Formations Ltd v LAPP Industries Ltd* [2025] EWHC 1526 (TCC) concerned a dispute over the validity of an application for payment issued by the Defendant contractor, LAPP.

LAPP had previously succeeded in persuading an Adjudicator that its application was valid, and had been awarded £100,000 plus VAT. Summary judgment enforcing that Award in favour of LAPP was subsequently granted by the TCC; we covered those earlier proceedings in detail [here](#).

In an effort to reverse that earlier Decision and Judgment, Formations commenced a claim using the short-form Part 8 procedure.

Key takeaways:

- An interim payment application is valid if it is clear in form, substance and intent – even if not perfect.
- Courts will adopt a pragmatic, realistic view of such applications and will not condemn them on artificial or contrived grounds.

Factual Background

Formations engaged LAPP to refurbish various office spaces in Covent Garden. The contract subsequently grew in scope based on additional quotations and acceptances, and further instructions for variations. The Court had previously determined that all works nevertheless fell under a single contract.

Since the Contract did not require any payment terms as required by the Housing Grants, Construction and Regeneration Act 1996 (the “**Act**”), the provisions of the statutory Scheme for Construction Contracts

1998 (as amended) (the “**Scheme**”) were to be implied into the Contract to fill the void.

On 14 April 2023, LAPP submitted an interim payment application (the “**Payment Application**”) stating the total amount now due was £341,854.32, but requesting payment of a lesser sum of £100,000 plus VAT “on account”. Formations did not pay, but nor did it issue a Payment or Pay Less Notice, a fact not in dispute.

LAPP commenced an Adjudication, asserting that its Payment Application constituted a default payment notice for the notified sum of £100,000 plus VAT. The Adjudicator agreed; awarded LAPP the notified sum; and when Formations still did not pay, LAPP obtained summary judgment enforcing the Decision.

Formations remained dissatisfied and commenced Part 8 proceedings in an effort to reverse the position. Regular readers of our bulletins will be aware that the Part 8 procedure is a short-form procedure suitable for use where the Court is asked to decide a question which is unlikely to involve a substantial dispute of fact.

Here, Formations asked the Court to determine that the Payment Application was invalid because:

- It was not framed properly with regard to paragraph 2(1) of Part II of the Scheme;
- It was ambiguous, relying on a “provisional valuation” and seeking “payment on account”; and/or
- It was said to contain an incorrect payment timeline which was inconsistent with the Act and the Scheme.

Held

HHJ Adrian Williamson KC rejected each of Formations’ arguments and held that the Payment

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Application was valid. The Judge provided the following analysis:

1. Was the Payment Application sufficiently clear?

The Payment Application satisfied the guidance provided in the earlier decision of *Kersfield v Bray and Slaughter* [2017] EWHC 15, that “interim applications must be sufficiently clear and unambiguous in form, substance and intent.” The Judge also cited the more recent decision in *Advance JV v Enisca* [2022] EWHC 1152, which emphasises that notices should be construed objectively, focusing on how a reasonable recipient would interpret them.

On this basis, and looking at the Payment Application on its face, a reasonable recipient would have no difficulty in understanding it to be an application for an interim payment. The Payment Application clearly stated that LAPP was seeking £100,000 plus VAT to be paid within 14 days, and the judge noted that contrary to Formations’ suggestion, serving a notice in response would not have been an “impossible or Herculean task”.

2. Did the Payment Application comply with the Scheme?

Formations argued that the Payment Application was invalid due to ambiguity over payments and payment dates: LAPP had sought only £100,000 plus VAT “on account” of a greater sum £341,854.32 stated as being “now due”.

The Judge rejected this argument. He noted that paragraph 2(1) of the Scheme requires interim applications to set out “*the difference between the amount determined in accordance with sub-paragraph (2) and the amount determined in accordance with sub-paragraph (3).*” The Payment Application clearly stated that the “Total payment now due” figure was £341,854.32 which complied with the Scheme.

The Judge found no difficulty in the fact that as against this total due, LAPP had requested only a lesser amount “on account”, as it recognised final account negotiations with Formations’ quantity surveyor remained ongoing. LAPP’s realistic and commercial decision to confine itself to a claim for a smaller sum did not invalidate its Payment Application.

The Judge also rejected Formations’ point concerning the dates for payment as being “misconceived”. He considered LAPP were saying that payment was due by 14 April 2023, and that the final date by which that payment should be made was 14 days later, on 28 April. Interestingly, the Judge added that even if one or other of those dates was erroneous, that would not invalidate the Application; while “Formations might have been entitled to respond that the due date and/or final date for payment had not yet arisen”, that went to “points that might be raised in answer to the Application, rather than to the validity of the Application itself”.

Further, the Judge commented that he was “not shown any authority which required the due date or final date to be accurately stated in order to render a payee’s notice compliant with the Act or the Scheme”.

Commentary

The statutory payment regime prioritises clarity and cash flow over technicalities. Applications for payment do not require ‘magic words’ or absolute precision; what matters is that a reasonable recipient can understand what is being claimed and why. The Courts will take a commonsense, practical view of the contents of a payee’s notice and will not adopt an unnecessarily restrictive approach.

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