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Cashflow for Small Businesses—The Construction Contracts Act

— By Michael Moohan



Builder Bill was asked by a customer to build a garage. He inspected the plans and gave a verbal quote. The customer accepted the quote, they shook hands on it and Bill built the garage.

The customer was satisfied and a couple of weeks later Bill sent an invoice for the exact amount that he had quoted. The customer did not pay.

Every month for the next year Bill sent another invoice, until he got fed up and decided to sue. Since he had not heard a thing from the customer imagine his surprise when he received notice not only was the customer disputing he owed Bill anything, but that he was defending it on the basis that the garage had not been built correctly and the roller door was not working correctly.

If Bill had used the Construction Contracts Act 2002 (“Act”) correctly, this would not have happened.

The Act has put in place a system for trades to claim payment, for customers to object to payment and a fast track way of enforcing payment.

So how should Bill have used the Act? First he should have provided a written quote with his terms and conditions of trade attached.

These terms and conditions

should include: when payments are due, where payment claims are to be served/delivered, an interest rate for late payment and legal costs on a solicitor/client basis payable by the customer for any recovery action. It is essential that the terms and conditions are attached to the quote—it is too late to have them on the invoice.

Bill should also have had the customer sign an acceptance of the quote (and therefore the terms and conditions).

Next Bill should have issued a “payment claim”. This is analogous to an invoice, but it: must be in writing, must contain sufficient detail to identify the construction contract (the agreement to do the work and to be paid for it) and the relevant period to which the payment claim relates, the amount claimed and it must state that it is made under the Act so that at the top of Bill’s payment claim should be the statement “This is a payment claim under the Construction Contracts Act 2002”.

If the work being done is under a residential construction contract, the payment claim must also include a notice of rights to the residential occupier.

Once Bill had done all that, the only way the customer could dispute payment was to serve a payment schedule on Bill identifying the payment claim it relates to within the period allowed for in the Act, indicate the amount (if any) that he proposes to pay, and if less than the claimed amount, how it was calculated and the reason for the difference to Bill’s claim.

If no payment schedule was served correctly, Bill could have immediately filed summary judgment proceedings in Court and even if the customer had good reason for not paying, failure to serve a payment schedule would have been fatal and Bill would get judgment.

So while it is not a magic wand, the Act would have stopped the customer from slowing down the process to Bill obtaining his money.

If you have any questions about the Act, or if you want help drafting your terms and conditions, or even if you just want to know if the Act covers your business, give us a ring.

The next newsletter will cover the topic of Estates—Do I Need to Apply for Probate by Nicola Goss