

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
TECHNOLOGY AND CONSTRUCTION COURT (KBD)

Birmingham Civil and Family Justice Centre
Priory Courts
33 Bull Street
Birmingham
B4 6DS

Date: 9 May 2024

Before :

Her Honour Judge Sarah Watson

Between :

Ubhi Construction Limited	<u>Claimant</u>
- and -	
Aspire Enterprises (UK) Limited	<u>Defendant</u>

Iqbal Mohammed (instructed by **Smith & Wells Solicitors**) for the **Claimant**
Simon Clegg (instructed by **Rutherfords LLP**) for the **Defendant**

Hearing dates: 24, 25, 29 and 30 January

JUDGMENT

HER HONOUR JUDGE SARAH WATSON:

BACKGROUND

1. On 5 February 2016, the Claimant, Ubhi Construction Limited, entered into a JCT contract with a company called Millenium Enterprises Limited (Millenium) for a residential development in Ironbridge (the Ironbridge Contract). The Ironbridge Contract was signed by Mr Bobby Dhanda (Mr Dhanda), who was a shareholder of Millenium and who had, on 21 January 2016, resigned as a director of Millenium. Mr Amratpal Singh (Mr Singh) was also a director and shareholder of Millenium.
2. Mr Dhanda and Mr Singh were also associated with the Defendant, Aspire Enterprises (UK) Limited. It is common ground that Mr Dhanda and others for the Defendant discussed with the Claimant a development at Willenhall. The project was to build houses and apartments. On 31 May 2016, the Claimant sent the Defendant a quotation for building 15 houses and 15 apartments. The quoted price for the works was £2,913,875. A revised quotation was prepared for 14 houses and 15 apartments and for a reduced price of £2,626,444. However, it appears that the Defendant decided to split the project into two phases: the houses and the apartments.
3. It is the Claimant's case they entered into a JCT contract with the Defendant for the construction of fourteen houses at Willenhall on 19 August 2016 for the price of £1,398,375 (the Contract) and that Mr Dhanda signed it on that date for the Defendant. The Defendant denies that it ever entered into the Contract. The Defence, which was re-amended after the CCMC, at which it was agreed that the Defendant should clarify its allegations with regard to the signature of the Contract, states that Mr Dhanda "*did not execute the Contract on behalf of the Defendant and that the*

signature B Dhanda was not written on the Contract by Mr Dhanda or with his authority or with that of the Defendant”.

4. In early September 2016, the Claimant secured the site at Willenhall with Heras fencing and brought plant to site, including portacabins, toilets, and canteen facilities. It is common ground that the Claimant cleared the site ready for development. The Claimant says that it did so as part of the preliminary work under the Contract. The Defendant denies the existence of the Contract. It alleges that the parties entered into an oral agreement on 27 November 2015 at the Village Hotel in Willenhall for the Defendant under which the Claimant agreed to clear the site for the price of £30,000. It alleges that that was the only contract between the parties for work at Willenhall and that the clearance work had been completed and paid for before the date of the Contract (the existence of which it denies). The Defendant’s alternative case is that, if the parties did enter into the Contract, it was conditional on the Defendant obtaining funding for the work.
5. The Claimant remained on site and continued to hire plant and equipment for the site. The parties corresponded on various issues, including drainage and utilities and the requirements of the Defendant’s proposed funders. Between March 2017 and October 2017, the parties were in correspondence about the project, including, in the latter stages, through solicitors. On 31 October 2017, the Defendant signed a contract with another contractor for the price of £1,179,456, which was significantly lower than the price stated in the Contract.
6. The parties agree that Defendant paid the Claimant £30,000. The Claimant says that was a payment towards the contract price as a result of the Claimant incurring costs

and starting work. The Defendant says that was the agreed price for the oral contract to clear the site.

7. The Claimant has raised invoices for the period between September 2016 and October 2017 for the hire of plant and equipment and standstill charges, on the basis of delay to the project. Its monthly invoices are for £11,960, being £490 per week for portacabins, toilets, storage and fencing and £10,000 per month for standstill charges. It claims payment of those invoices, totalling £206,350.00. In addition, it claims damages for breach of contract, being its lost profit on the Contract which the Defendant prevented it from performing, calculated at 20% of the contract price, on the basis that it built a 20% profit margin into the price.
8. The Defendant denies liability to pay any of the claimed sums, on the basis it denies the existence of the Contract. Its position is that the only contract was the oral contract to clear the site for a price of £30,000, and that it has paid that sum.

THE ISSUES

9. The issues in this case are as follows.
 - i) Did Mr Dhanda sign the JCT contract?
 - ii) If so, was the contract conditional on funding so that it did not bind the Defendant until it had obtained funding?
 - iii) If the contract was not conditional, is the Claimant entitled to payment of the invoices that it raised for the costs of the hire of plant and equipment and for standstill charges?

- iv) If the Contract was not conditional, what is the Claimant's recoverable loss? There is no issue between the parties that, if the Contract was not conditional, the Claimant is entitled to damages for the Defendant's breach of it by refusing to allow the Claimant carry it out.

THE EVIDENCE

10. I have read the documents in the bundle to which I have been referred, which are mainly e-mail correspondence between the parties and others involved in the project. I heard evidence from Mr Ubhi and Mr Matharu, directors of the Claimant. I also heard from Mr Suresh Farmah for the Claimant. I heard evidence from Mr Dhanda, Mr Bajwa and Mr Singh for the Defendant. In addition, for the Defendant, I heard from Mr Ashley Cooper, a Chartered Surveyor, and his wife, Mrs Vikki Cooper, a Quantity Surveyor, both from Edwards Cooper Young, which firm was advising the Defendant's proposed funder for the project, Oblix.
11. Both Mr. Cooper and Mrs Cooper were clearly entirely honest and straightforward witnesses. Both Mr Ubhi and Mr Matharu gave evidence that was consistent with their witness statements and the contemporaneous documents. They made appropriate concessions in their oral evidence. They impressed me as honest witnesses. Mr Farmah also struck me as an honest witness. Mr Dhanda was not an impressive witness. His evidence was often contrary to the documentary evidence and he made no concessions, even when faced with evidence that flatly contradicted his evidence. Mr Bajwa's evidence was limited. Like Mr Dhanda, he did not make concessions, even where documents contradicted his testimony. Unlike Mr Dhanda and Mr Bajwa, Mr Singh was clearly uncomfortable when asked questions about statements he had made in his witness statement that were contradicted by

documentary evidence, and admitted he could not explain why he had made those statements.

12. For completeness, I should add that Mr Singh's sister, Mrs Jagdeep Gill (Mrs Gill), was a shareholder and director of the Defendant. She gave no evidence and, as far as I am aware, was not mentioned in any of the correspondence about the project in the trial bundle. It is unclear what, if any, role she has ever played in the Defendant company. There is no evidence that she had any involvement at with the business of the Defendant, despite nominally being its director and shareholder.

DID MR DHANDA SIGN THE JCT CONTRACT?

13. The Defendant's case is that Mr Dhanda did not sign the contract on which the Claimant relies. The Defendant has not pleaded that, if it was signed by Mr Dhanda, he did not have ostensible authority to do so. The Defendant accepts that, if the contract was signed by Mr Dhanda, it is binding on it, subject to the question of whether the Contract was conditional. The simple issue before me therefore is whether Mr Dhanda signed the Contract.
14. The Claimant relies on the executed agreement, the witness evidence of Mr Matharu and the witness evidence of Mr Farmah, both of whom gave evidence that Mr Dhanda signed the agreement in their presence in a pub in Lichfield called The Pig (later confirmed to be the Pig and Truffle) on 19 August 2016. The Claimant also relies on the contemporaneous documents which it contends are consistent with the Contract having been executed by the Defendant.
15. The Defendant relies on the evidence of Mr Dhanda that he did not sign the Contract. It relies on the fact that Mr Dhanda was not a director of the Defendant at the time and

the evidence of its witnesses was that its practice was for contracts to be executed by directors, and therefore Mr Dhanda would not have signed the Contract.

16. Mr Matharu gave clear evidence that the Contract had been signed in his presence and that Mr Farmah had acted as witness to the signature. Mr Farmah's evidence was that he had travelled to the pub which he believed was called The Pig for a social drink with Mr Matharu, who was both a personal friend and a business associate of his. His evidence was that Mr Matharu drove him to the pub and that, at that time, he had not been aware that he would be asked to witness the execution of a document but that, when he was at the pub, he was asked to witness the signature of the Contract. His evidence was that Mr Dhanda was not known to him at the time but that he recognised him in court as the person who had signed the document. Both Mr Matharu and Mr Farmah gave consistent evidence on this issue.
17. Mr Dhanda's evidence was that he had never signed the agreement. In his witness statement, he stated that, at a meeting at the Belfry Golf Club on 14 March 2017, *"Ubhi produced the JCT Contract which they had (sic) now attached to their Particulars of Claim dated August 2016. They claimed that they had already entered into a contract with us and we were obliged to proceed. I was astonished. I never signed a JCT Contract with Ubhi. I was not a director or shareholder of Ubi at the time this contract was alleged to have been signed in August 2016. I did not sign documents for that reason."*
18. On 2 September 2016, a couple of weeks after the date on which the Claimant alleges Mr Dhanda signed the JCT contract, Mr Matharu emailed Mr Dhanda as follows:

"Bob

We have the whole site fenced off and all facilities are now on site.

We really need funds sending through now. I know you're on holiday, but you should be able to sort something out from there."

19. From that, it is clear that, as at 2 September 2016, which was a couple of weeks after the date on the Contract, the Claimant had recently started work on site and had brought in facilities.

20. In response that same day, Mr Dhanda sent an e-mail to Mr Matharu as follows:

"Hi Bob

I appreciate your help and signing up the contract before I went away protects both parties.

The revised information was only sent to the finance company a few days before I left.

The finance still needs to be fully approved and then signed off at solicitor. This will hopefully be ready by the time I get back. Be assured I am on top of things even though I am away.

Regards

Bob"

21. This email is clearly inconsistent with his evidence that he never signed the Contract and the only contract was an oral contract for clearing the site for £30,000. It expressly refers "*signing up the contract*". It states that it "*protects both parties*". It is clear from the fact that his email was sent in response to Mr Matharu's email seeking payment because they were now on site that he meant to reassure Mr Matharu that the contract that had been signed would protect the Claimant in relation to its costs, and that he hoped the finance would soon be approved. It is impossible to read

that email as anything other than the Defendant's reassurance to the Claimant that it would be paid and that it had the protection of the contract that had been signed up.

22. The Claimant had pleaded that the email was clearly inconsistent with the Defendant's case. It is therefore particularly surprising that Mr Dhanda did not address this document in his witness statement. In cross examination, he said that he had been on holiday at the time he had sent it and had been relaxing, and was not in work mode, and that that it was an error. I find it very difficult to understand why, however relaxed he might have been on holiday, he would make the mistake of thinking that a contract had been signed that had not been, or that its existence would reassure and protect the Claimant, which was clearly concerned it had not been paid. It is not the sort of error that is easy to make.
23. On 4 November 2016, Mr Matharu sent a PDF document to Mr Dhanda by email. 14 minutes later, Mr Dhanda forwarded that message to Mrs Cooper under cover any of an e-mail stating "*Hi Vikki Attached is the JCT contract*". Mr Dhanda's oral evidence was that he had not forwarded the signed JCT contract to Mrs Cooper but had sent her a blank JCT contract. He stated that he had not had an e-mail from Mr Matharu or Mrs Cooper with a signed contract.
24. On 4 November 2016, Mrs Cooper emailed Mr Matharu as follows:

"Hi Bob

Bob Dhanda has emailed the Google link for the JCT contract to me, however I am unable to open as I need permission on the Google account. I have sent a request via Google. Just in case you were unsure who the request was from, we

are the bank's Monitoring Surveyors and will be required to make comment on the Contract within our initial development appraisal for the Bank."

25. It is of note that Mrs Cooper refers to "the Contract". From this, it appears she was under the impression (presumably from Mr Dhanda) that the document sent by Mr Dhanda that she had been unable to open was a contract, not a blank JCT form, as alleged by Mr Dhanda.
26. Although the PDF attachment had not been included in the bundle, it was available in electronic form and had been disclosed by both parties. As Mr Dhanda was forced to accept when it was shown to him, the attachment to it was the signed Contract on which the Claimant relies. In re-examination, he was asked whether he had opened the attachment. He responded that he did not recall opening it. However, there was a 14 minute delay between receipt of the e-mail and forwarding it to Mrs Cooper. In addition, no explanation was offered as to why it would be necessary to send a blank JCT contract to Mrs Cooper, a Quantity Surveyor advising a funder on a development project, who clearly had ample experience of construction contracts. It is clear that the purpose of sending her the Contract was so she could consider its terms. A blank JCT contract would have been of no use to her.
27. On 13 December 2016, Mrs Cooper emailed Mr Dhanda (among others) in the following terms:

"Contract- the executed contract we received did not incorporate the elements we would normally expect to see. We have advised that the contract is terminated and a new one drafted for our review."

28. It is clear from this that Mrs Cooper had seen an executed contract, that she understood it to bind the parties and that she considered that, if it was to be replaced with one in more suitable terms for her client funder, the existing contract would need to be terminated.
29. On 22 December 2016, Mr Dhanda emailed Mrs Cooper in the following terms:
- “I have also spoken to the contractor UBHI Construction regarding the JCT contract. Bob will be emailing you with a few questions and I would appreciate if you could reply so we can have the JCT contractor signed in the format that would be appropriate to the Bank”*
30. In that document, Mr Dhanda referred to the Defendant as the contractor, not one of several possible contractors.
31. Despite the overwhelming contemporaneous documentation supporting the existence of an executed contract, Mr Dhanda maintained his position in his oral evidence that he had not signed the Contract and that it had been a shock to him in on 14 March 2017 when the Claimant had claimed that such a contract existed.
32. The Defendant’s witnesses gave evidence that Mr Dhanda could not have signed the JCT contract because he was not a director or shareholder of the Defendant at the time the Contract was alleged to have been signed.
33. Mr Bajwa’s witness statement stated *“I work with my co-directors Bob [Mr Dhanda] and Dave [Mr Singh] in this company..... I have read the statements of Bob and Dave and I agree with the statements they have made. Bob has provided a detailed statement. To avoid repetition, I do not repeat his statement here save to state that the statement is accurate.”*

34. Mr Singh's statement contained the following:

"I have seen a copy of the witness statement of my current co-director Bob Dhanda and I confirm that the contents of Bob's statement are true. To avoid repetition I do not repeat what he has says (sic) but agrees(sic) with what he says.

There is a JCT contract dated 19 September (sic) which appears to have the signature of Mr Bob Dhanda, my current co-director. I was very surprised to see this document. Bob was not at that time a director of Aspire and Bob would not sign a document on behalf of Aspire as he was not a director and did not have authority to sign documents. Documents such as JCT contracts are always signed by the directors of Aspire which were myself and my co-director Kulwinder Bajwa (Karl). Bob has only become a director of Aspire in recent years."

35. In his witness statement, Mr Dhanda said *"I am currently Director and Shareholder of Aspire (UK) Enterprises. However, at the time of the alleged contractual relationship between the Claimant and the Defendant in 2016, I was not a Director or Shareholder. The relevance of my position as a non-Director is relevant, which I will deal with in due course."*

36. He also said that, at the time of the initial discussions with the Claimant in respect of the Willenhall project *"At this point, I specify that I was not, yet a director and shareholder in Aspire. I had had a minor difficulty with a CCJ in my name which stopped me from being formally involved at that time. I was a shareholder and informally involved but, as I was not a director. I did not have a formal involvement which meant that I was not entitled to on behalf of Aspire (sic) and, importantly, was*

not authorised by Aspire or the financiers to sign any contract on behalf of Aspire. I didn't sign these types of documents at that time."

37. Mr Dhanda's evidence that he would not have signed the Contract because he was not a director of the Defendant is inconsistent with his having signed the Ironbridge Contract between Millennium and the Claimant. Mr Dhanda accepted that he signed the Ironbridge Contract despite not being a director of Millennium at the time, having resigned a few days earlier. His evidence was that he was authorised to sign the Ironbridge Contract despite not being a director of Millennium because he had a substantial financial interest in Millennium.
38. When he gave evidence in chief, before confirming the truth of his witness statement, Mr Dhanda corrected his witness statement. He stated that his witness statement was incorrect, that he was not a current director and that he had never been a director of the Defendant. He also said he was not a shareholder and had never been a shareholder of the Defendant. He confirmed the truth of his witness statement subject to those corrections. His evidence was that his position in relation to Millennium (of which he was a substantial shareholder) was different from his position in relation to the Defendant, of which he was, according to his oral evidence, never a shareholder and was merely an employee.
39. On 30 January 2024, which was the last day of trial, the Defendant's witnesses having finished giving evidence on 29 January 2024, the Claimant became aware of filings at Companies House on behalf of the Defendant. Companies House records show filings on 29 January 2024 stating that, on 16 January 2024, Mr Dhanda had transferred 34 shares (being one third of the issued share capital of the Defendant) to Mrs Gill at the same time as Mr Bajwa had transferred 34 shares to her. At the same

time, Mr Bajwa had resigned as a director leaving Mrs Gill as the sole director and shareholder of the Defendant, holding the entire issued share capital of 104 shares.

40. The Defendant submitted through counsel that its accountant would be able to confirm by letter that the reference to 16 January 2024 was a mistake and that the transactions had actually occurred on 29 January 2024. Although the Claimant did not accept that explanation, to avoid the need for an adjournment, the costs of which would be disproportionate to the importance of the issue, it was agreed that I would not be asked to make any finding that the transactions had actually occurred on 16 January 2024 rather than 29 January 2024. I proceed therefore on the basis that the transactions recorded at Companies House as having occurred on 16 January 2024 actually occurred on 29 January 2024.
41. At counsel's invitation, I have checked the records at Companies house as the documents made available are not complete. Those records show:
- i)** Mr Dhanda was a 50% shareholder in the Defendant shortly after it was formed in 2014. At that time, he was company secretary.
 - ii)** He resigned as company secretary on 1 July 2015. At that time Mrs Gill was appointed as a director. The directors were Mrs Gill and her brother, Mr Singh. The shareholders were Mr Dhanda, Mr Bajwa and Mrs Gill, who owned 34 shares each
 - iii)** On 12 August 2016, Mr Dhanda transferred his shares to Mr Bajwa. Mr Bajwa then held 68 shares and Mrs Gill 34 shares.
 - iv)** On 5 February 2019, a confirmation statement with updates was filed. It showed that Mr Dhanda, Mr Bajwa and Mrs Gill each owned 34 shares. It did

not state when any shares had been transferred since the last statement with updates.

- v) On 16 January 2024 (which I shall treat as 29 January 2024) Mr Bajwa and Mr Dhanda each transferred their 34 shares to Mrs Gill and Mr Bajwa resigned as a director. The sole director and shareholder is now Mrs Gill.

42. In the light of the clear contradiction between the documents filed at Companies House and Mr Dhanda's oral evidence that he had never been a shareholder of the Defendant, Mr Dhanda was recalled to give further evidence. He gave oral evidence that he believed he was not a shareholder in the Defendant and that he had been instructed to deal with the planning application and the day-to-day running of the Defendant. He said he had learned he was a shareholder the previous day (ie on 29 January 2024) when Mr Bajwa had phoned his accountant and "it came out" that he had a shareholding. No explanation was provided as to why Mr Bajwa phoned his accountant, or why these transactions should have occurred immediately after the Defendant's witnesses had concluded their evidence.

43. Mr Dandha said it had not dawned on him when he learned he was a shareholder that he should correct the oral evidence he had recently given in court that it had come as a shock to him to learn he was a shareholder. When asked what consideration he had received or would receive for the transfer of the shares to Mrs Gill, he said he had no idea. He was asked why he had not thought to ask Mr Bajwa how why he was recorded as a shareholder if he was not one. He said that it was a shock and he had yet to have a conversation with Mr Bajwa to find out why he was a shareholder of the company, and that he had not had an opportunity to do so because, after the court case

had finished the previous day, Mr Bajwa had had a pressing engagement and so had Mr Dhanda.

44. He was asked why he had transferred the shares to Mrs Gill the previous day. He replied that he had never had an interest in the Defendant, that his role was to be employed to oversee the planning deal with contractors etc. He gave no explanation as to why there was sufficient time yesterday, despite pressing engagements, to deal with the transfer of his shares in the Defendant to Mrs Gill but had no time to discuss how it had come about that he was a shareholder.
45. It was put to him that he had no proof that he was ever employed by the Defendant, to which he responded that he was authorised by the directors and that that was an instruction and employment. It was put to him that when the company was incorporated, he was an equal shareholder with Mr Bajwa. He said he did not know that. When he was asked whether he had been unaware that he had owned half the company, he said it was eight or nine years ago and he did not remember.
46. I asked Mr Dandha why, if he believed he had no financial interest in the company, he had spent his own money funding the project, as the documents showed he had. He said it was because he loaned money to Mr Bajwa and Mrs Gill. He said that he had not been paid a salary but that there was an agreement that, when the company made profits, he would be paid £60,000 for overseeing the development. Despite accepting that he was the person responsible for overseeing the development and accepting that he dealt with the sale of the properties at the end of the development, including dealing with the estate agents, he said was not privy to the company's accounts and did not know whether the development had been profitable.

47. I did not find any part of Mr Dhanda's evidence on this issue to be credible. He was recorded as a 50% shareholder when the Defendant was formed, when he was the Company Secretary. The records show his shareholding has varied over time, including by reducing his shareholding to one third, then to nil, and then reverting to one third. It is not clear when he resumed ownership of one third of the Defendant, but it was before 5 February 2019, according to the filings at Companies House. Given the Defendant's position is that the transactions recorded on 29 January 2024 did not occur until that date, he must have been a one third shareholder at a time when his sworn evidence was that he was not, and never had been, a shareholder.
48. An email dated 2 September 2016 from Mr Dhanda to Mr Matharu stated he had used his personal funds to pay M&J (which I understand was a contractor involved in groundwork on the site). That is consistent with his holding a financial interest in the Defendant.
49. Mr Dhanda is recorded as a director or former director of several companies. He is clearly an experienced developer. Mr Bajwa and Mr Singh gave evidence that they relied on his expertise to run the project. It is also clear that they were far less familiar with the details of the project than Mr Dhanda. I do not find it credible that Mr Dhanda ran a multi-million pound development and injected his own personal funds into it by paying contractors on the basis that he was only to receive a profit share of £60,000. The alleged profit share arrangement was not mentioned in any of the witness statements. There were no documents in the trial bundle evidencing such an arrangement. If he had been working for a profit share, given he ran the entire project (including dealing with planning, the contractors, negotiating contracts and dealing with the sale of the properties), I consider it is extremely unlikely that he would not

know whether the development had been profitable and whether he was entitled to his £60,000 payment long after it was completed.

50. I find that, whether or not he was recorded at all times as a shareholder at Companies House, Mr Dhanda had a financial interest in the Defendant company at the material times. I do not accept that he did not know he was a shareholder in the Defendant until after he had given his evidence. I find he knew he was and had been a shareholder of the company, as he had originally said in his witness statement and as Mr Bajwa and Mr Singh had confirmed in their witness statements, and that his assertion that he had never been a shareholder was made in an attempt to distinguish his ability to sign the Ironbridge Contract for Millenium and his alleged inability to sign the Contract for the Defendant, on the basis he had a financial interest in Millenium but no financial interest in the Defendant.
51. I note also that, on 2 March 2017, Mr Dhanda emailed Mr Matharu to ask “*please provide a full break down of all outstanding costs and invoices so I may sit down with the other Directors.*” At that time, Mr Dhanda was clearly describing himself as a director.
52. Mr Dhanda, Mr Bajwa and Mr Singh all agreed that Mr Dhanda dealt with the project. There is no doubt that he dealt with negotiations with contractors, including the Claimant.
53. At the CCMC in this case, there was discussion about the need for expert evidence from a handwriting expert, given Mr Dhanda’s denial that the signature was his. At the time the Defendant obtained permission to re-amend the Defence to clarify its position with regard to the question of whether it alleged the signature was fraudulent, the parties were granted permission for expert handwriting evidence in the event that

the Defendant did plead the signature was fraudulent. Although the word “fraud” is not used in the Re-Amended Defence, it does make clear that it is denied that the signature was Mr Dhanda’s. No expert evidence was filed to support this contention. Mr Dhanda sought to explain this in his witness statement. He stated that he had considered obtaining an expert’s advice to analyse his signature to prove the signature was not his but he had been advised that an expert would need to analyse “*many many original documents*” that bore his signature on or around 2016 and that he was “*unable to find hardly any original documents (sic) so decided there was no point in getting formal advice on the signature*”. Mr Dhanda had clearly managed many building projects. Earlier in 2016, he signed the Ironbridge Contract. As project manager of a substantial development project at Ironbridge and a further substantial project at Willenhall, I consider it extremely unlikely that it was not possible for him to find sufficient examples of his own signature for submission to a handwriting expert to obtain a report to support the Defendant’s position that the signature was forged.

54. I did not find Mr Dhanda’s evidence credible. I prefer the evidence of Mr Matharu and Mr Farmah. I find that Mr Dhanda signed the JCT contract on 19 August 2016.

WAS THE CONTRACT CONDITIONAL ON FUNDING?

55. The Defendant's case is that, if the Contract was executed, it was conditional on the Defendant securing finance to undertake the development of the site over and above its clearance, that any contract for development would have to be approved by a finance company, that the Claimant knew such approval was necessary and the Contract was conditional upon approval by the finance company and that no contract

would come into effect unless and until such approval had been provided, for which purposes it was necessary that solicitors for the Claimant, the Defendant and the finance company be engaged. Its case is that at no time was such consent forthcoming; nor did the Defendant inform the Claimant that consent had been forthcoming or that there had been approval. Its case is that, no approval having been obtained from a finance company, the condition necessary for the Contract to come into effect was not fulfilled and there was therefore no contract made between the parties other than an oral contract to clear the site.

56. There was little evidence before me as to whether funding had actually been obtained or whether it could have been obtained so as to fulfil the condition, whether from the proposed funders, Oblix, or any other funders. Some documents suggested that funding had at one point been withdrawn but was subject to an appeal. I assume that funding must have been forthcoming at some point, since the project was built.
57. In opening submissions, Mr. Clegg confirmed that it was the Defendant's case that, if the contract was conditional, the condition was not met and the Defendant was free to continue with negotiations with other contractors and to enter into a contract with another contractor. The Claimant has not pleaded that the Defendant was under any obligation to take steps to obtain funding or that funding was actually obtained, its case being that the Contract was not conditional.
58. As a result, the simple question before me is whether the Contract was conditional on funding.
59. The first point with regard to the allegation that the Contract was conditional is that it is not stated to be conditional. It is an executed JCT contract. If it was conditional, I would expect that it would be expressed to be so, on its face.

60. Secondly, there is no reference in the contemporaneous correspondence to the Contract being conditional. The Defendant relies on certain documents as being consistent with it being conditional, which I shall consider below, but there is no document expressly stating that it is. I am asked to find that, notwithstanding the existence of an executed contract, the parties had agreed it was to be of no effect unless funding was in place, yet that condition was not anywhere recorded in writing. That seems to me to be unlikely.
61. Thirdly, if the Contract was conditional, in the absence of any duty on the part of the Defendant to seek to obtain funding, the Contract would be, effectively, unenforceable by the Claimant and would not provide it with any protection at all. All the Defendant needed to do to avoid its obligations under the Contract would be not to seek funding or to refuse to accept a funder's offer. It is not clear why the Claimant would enter into a Contract which bound it to perform the Contract if the condition was fulfilled but did not provide it with any protection and would leave the Defendant free (as it contends it was) to enter into a contract with another contractor. It lacks commercial common sense.
62. Fourthly, the Defendant's pleaded case is not that the parties expressly agreed that the Contract was conditional, in the sense that they discussed and agreed that it should be, or that anyone used any words to that effect. Its pleaded case is that it was conditional, that it was necessary for any contract to be approved by a finance company, and that the Claimant knew that approval was necessary. The Defendant pleads that the Defendant had contracted with Millenium and that parties agreed that any contract made by Millenium was conditional upon approval of finance and that Mr Dhanda had informed the Claimant of the need for consent and that the Claimant

therefore knew that approval was necessary for the Willenhall project. It is noteworthy that, although the Defendant pleads that Mr Dhanda had expressly informed the Claimant that the Ironbridge Contract was conditional, it has not pleaded that he did so in relation to the Contract.

63. The witness statements of Mr Dhanda, Mr Bajwa and Mr Singh do not state that any of them expressly discussed with the Claimant that the Contract was conditional on funding or that there was an express agreement to that effect. The principal evidence was given by Mr Dhanda, with Mr Bajwa and Mr Singh confirming their agreement with his witness statement. Mr Dhanda gave evidence in his witness statement of the way that he contends “*building project work throughout the industry works*”. His evidence was that “*you come to a provisional arrangement with a builder to carry out works that you want to have undertaking at a provisional price. Plans are drawn up and basic terms initially agreed. We then approach financiers to finance that project.*” The Defendant’s case appears to rely on assertions as to the way developers generally contract and the way it contends the parties had contracted at Ironbridge.
64. It was put to Mr Ubhi that he was aware that the Defendant needed funding. He responded that the Claimant had not known for what stage of the project the Defendant needed funding, and that the Defendant may have had money for the start and needed funding for the back end of the project. It was also put to Mr Ubhi that projects of this type are generally funded, and that he would expect a company to require finance. He responded that he would not always expect that and that some clients have their own money and do not always require finance. He said that he was aware at Ironbridge that some money came from Mr Dhanda’s personal accounts, but generally he would not know the source of Millenium’s payments, as they came from

Millenium not any finance company. It was put to him that he was aware that the works at Ironbridge had to be certified by a QS. He said that they were paid against invoices, and they dealt with Mr Dhanda who would come to site, see what work had been done and pay the invoice.

65. In cross examination, Mr Dhanda was asked about his statement that he had not been a director of the Defendant because of a CCJ against him. He said that the CCJ was entered in 2014 or 2015. He was asked why the CCJ had not prevented him from being a director of Millenium. He said “*we did not require finance*” and that part of the development did not require finance. Mr Dhanda’s confirmation that they had not needed finance for at least part of the Ironbridge Contract at the time he signed it is consistent with Mr Ubhi’s evidence that some employers have their own money and do not need funding, or do not need it for the entire project.
66. There is no evidence before me that it was the Defendant’s understanding that all developers always need funding or that contracts are conditional until funding is in place, or that that was its understanding in relation to contracts with companies associated with Mr Dhanda, Mr Bajwa or Mr Singh.
67. Fifthly, the Claimant’s case is that the sum of £30,000 paid by the Defendant was a payment towards the contract price, the Claimant having started work in early September 2016. The Defendant’s position is that the £30,000 it paid was a payment for a separate contract for site clearance made in November 2015. Mr Dhanda’s evidence was that the parties had entered into a separate oral contract that the Defendant would pay £30,000 for the Claimant to clear the site, including breaking up tarmac, putting up Heras fencing his evidence would was that this was agreed and paid before 19 August 2015. Although it was not the subject of any correction, I am

assuming that the reference to 19 August 2015 is likely to be a typographical error and intended to mean 19 August 2016, that being the date of the Contract. In any event, Mr Dhanda's evidence was that the contract for site clearance had been completed and paid for before that date. In cross examination, Mr Dhanda was shown a copy of the Defendant's bank statement showing a payment of £30,000 to the Claimant on 10 October 2016. It is clear from that document that Mr Dhanda's evidence that £30,000 was paid for site clearance before the date of the Contract was incorrect.

68. Mr Dhanda was asked when he expected to pay the £30,000 for clearing the site. He said when the Defendant had been invoiced. However, he accepted that the Defendant had in fact paid £30,000 without having been invoiced. A payment without an invoice is more consistent with the Claimant's case that the £30,000 was an initial payment against the contract price than payment of the fixed price of a completed contract to clear the site. Both the timing of the payment and the fact the payment was made without an invoice are consistent with the Claimant's case and contradict the Defendant's.
69. In addition, if the Defendant's version of events were correct, and the £30,000 payment was payment of a fixed sum under separate contract, the Defendant's later correspondence is inexplicable. In March 2017, the Defendant asked the Claimant for evidence as to how the £30,000 had been spent. On 1 March 2016, the Claimant sent to the Defendant notice of uplift of the plant and machinery due to "*non payment of outstanding monies in line with the current JCT contract with hold with yourselves*". Although Mr Dhanda denied receipt of plant uplift notices, it was clear he received that email, since he responded to it shortly after receiving it, to say he was to have a

meeting with all parties concerned over the weekend and would get back to Mr Matharu as soon as possible. On 2 March 2017, Mr Dhanda emailed Mr Matharu to ask “*please provide a full break down of all outstanding costs and invoices so I may sit down with the other Directors.*” He followed that up later with a further email “*I need a full break down of the charges on Willenhall please. Itemise each cost separately please.*” He then added, in a further email “*also please quantify the £30,000 already paid on Willenhall*”. In an email on 4 March, he said “*Can you please supply this information with a full break down on the £30,000 already paid. Both Dave and Karl want to know what the money as (sic) gone towards and I need to be in a position to answer*”. A further email followed on 6 March 2017: “*Can you please forward the invoice relating to each cost. I have to explain and be in a position show the directors where the £30,000 as (sic) been spent*”. It seems obvious that, if the £30,000 was the fixed price of a contract to clear the site, payable on receipt of an invoice, as the Defendant contends, there would be no need for the Claimant to provide a breakdown of the costs or an analysis of how it had been spent. It would be irrelevant. The request for a breakdown is inconsistent with the Defendant’s case.

70. Mr Dhanda was asked why this sum had been paid without an invoice. He responded that the Defendant had asked for an invoice but not received one. However, the documents do not show a request for an invoice from the Claimant to the Defendant so the Defendant could account properly for the £30,000 said to have been paid as payment for a fixed price contract. They do show requests for evidence of the Claimant’s incurred costs.

71. Mr Clegg pointed to certain documents which he submitted were consistent with the Defendant's case. He pointed in particular to the following documents.
- i) In an email from Mr Dhanda to Mrs Cooper copied to Mr Matharu and Mr Ubhi on 22 December 2016, Mr Dandha said "*I have spoken to the contractor UBHI construction regarding the JCT contract. Bob will be emailing you with a few questions and I would appreciate if you could reply so we can have the JCT contractor signed in the format that would be appropriate to the Bank.*"
 - ii) In an email dated 17 January 2017 from Mr Dhanda to Mrs Cooper and copied to Mr Matharu and Mr Ubhi, he said "*we have nearly completed all the outstanding work necessary and will be looking to have the JCT contract signed soon.*"
 - iii) In an e-mail dated 20 January 2017 from Mr Dhanda to Mr Sedgemore, Mr Matharu and Mr Ubhi, he said "*just a quick e-mail to say we will have all the contract completed by this week and to you early next week.*"
72. Mr Clegg submitted these documents showed that a contract had yet to be entered into.
73. It is clear from the evidence of Mrs Cooper and Mr. Cooper that, whilst they understood there was an executed JCT contract, they were working with the parties to replace it with one that would be acceptable to the bank. This correspondence must be read in that context. The Claimant's witnesses accepted that it was in their interests to work with the Defendant and with Mr and Mrs Cooper to assist the Defendant obtain funding. The fact they considered they had a binding contract did not mean that it was not in their interests to consider varying it or even replacing it with one that was

more acceptable to funders. The fact that they were willing to do that and the parties contemplated entering into a varied or new contract to replace the Contract does not mean that the Contract was conditional or unenforceable.

74. Mr Clegg also submitted that an e-mail dated 29 August 2017 from the Claimant to the Defendant in which the Claimant provided a new quotation was evidence that there was no enforceable contract. However, in that email stated as follows: *“We would like to thank you for the opportunity of providing our estimate of works previously outlined in our JCT contract of 19 August 2016”*. The email expressly acknowledges the existence of the Contract. Also, the quotation is not for the same work as that covered by the Contract. It was for a larger project. It includes additional work, including the foundations to DPC for the apartments that the Defendant was planning to build, but which were not included in the Contract. I do not consider that email is inconsistent with the Claimant’s case that it had a binding contract.
75. Mr Clegg also referred to an email from Mr Matharu to Mr Dhanda of 10 April 2017 in the following terms *“I have asked for the plant on Stroud Ave to be removed. Because we initially took this on a 78 week hire, they’ve informed us that there will be early termination charges (to be notified to us, which I’ve also informed you at an earlier date verbally). The fencing will have to go at the same time unless you can pay for that up front and bring the account up to date in regards to the outstanding charges on the site.”* Again, the email appears more consistent with the Claimant’s case than the Defendant’s. If the Claimant only had the benefit of a conditional contract, which they could only rely on when funding was in place, it is difficult to understand why they would have taken on a 78 week hire contract for fencing the site

and for plant at the site. That is more consistent with the Claimant having understood that there was an enforceable contract that they were starting to perform.

76. Mr Clegg also submitted that the fact that, after 19 August 2016, the Claimant had sought quotations from suppliers for materials indicated that it did not consider it had a binding contract at that stage, as it would need those quotations to price its contract. The Claimant's witnesses explained that they had quoted using a third party estimating service, and they relied on that, and would seek the best prices they could from suppliers when they had won the contract. I do not find that in any way surprising. If contractors did not issue quotations until they had themselves obtained quotations for all the materials and labour they would require, they and their suppliers would waste a vast amount of time pricing materials and labour for a work that might not proceed.
77. Mr Clegg also submitted that the fact that it emerged in the Claimant's oral evidence that the parties had entered into an earlier contract for the larger project at Willenhall for which the Claimant had originally quoted (the houses and the apartments) showed that the way the parties contracted was flexible and/or that the Claimant's evidence was incomplete. However, it is clear from the documents that the Claimant had previously quoted for a larger contract, and Mr Ubhi said that he had not mentioned the earlier contract because he did not think it relevant. It is clear from the documents that the parties had been negotiating for a contract for all the work at Willenhall, but that later the project had been split into two phases and the Claimant is claiming only to have an enforceable agreement for the first phase. Whilst this is an omission from the chronology of events, I understand that the Claimant considered it irrelevant to give evidence about what preceded the contract on which it relies. The Claimant's

witness statements are considerably more detailed and precise as to the chronology of events than the Defendant's.

78. On 26 October 2016, Mr Dhanda emailed Mr Matharu and others *saying* “ *Also attached is the pre-commencement report which needs to be completed. Have a look at the sections that apply to you as the contractor and please provide information.*” When Mr Dhanda was asked about the use of the expression “the contractor” as indicating that a contract was in place with the Claimant, he said that the Defendant was also dealing with two other contractors at the time. However, no documents were in the trial bundle indicating the Defendant was negotiating with other contractors.
79. In addition, the Defendant asked for, and the Claimant provided, its insurance certificate as this needed to be provided for the funders. On 2 November 2016, Mr Dhanda sent to an email “*I have attached the Contractors insurance for your reference.....*” It is unlikely that funders would want a contractor's insurance details. They would require the contractor's insurance details.
80. In the Summer and Autumn of 2017, the parties began to correspond through solicitors. On 16 August 2017, the Claimant's solicitors sent to the Defendant's solicitors a copy of the Contract. Several chasing letters and threats to issue proceedings followed. The Defendant's solicitors wrote on 6 October 2017 to say that they understood that the Claimant had confirmed they still wanted to work with the Defendant and they had agreed that no further action would be taken while they tried to come to an agreement. It is noteworthy that, at no time, whether following the meeting at the Belfry in March 2017 or when the Defendant's solicitors reviewed the Contract between August and September of 2017, did the Defendant ever complain that the Claimant had forged Mr Dhanda's signature or even that they denied the

existence of the Contract. If Mr Dhanda genuinely believed the Claimant had forged his signature, it is inconceivable that he would not have made any complaint about it and would have continued to deal with the Defendant.

81. I find the contemporaneous documents are overwhelmingly consistent with the Claimant's case that the parties entered into a binding and enforceable contract in August 2016 and inconsistent with the Defendant's case that the Contract was conditional on obtaining funding and did not bind the Defendant until funding was in place.
82. The Claimant's witnesses were entirely credible. With the exception of Mr and Mrs Cooper, who were independent witnesses for the Defendant, I did not find the Defendant's witnesses to be credible. Their evidence was inconsistent with their own witness statements and the contemporaneous documents and I had the impression that Mr Dhanda was making his evidence up as he went along.
83. I find that the Contract was not conditional on funding. It follows, by agreement, that the Claimant is entitled to damages for the Defendant's failure to perform the Contract.

IS THE CLAIMANT ENTITLED TO PAYMENT OF ITS INVOICES?

84. The Claimant accepts that one of its invoices duplicates sums claimed in other invoices and clarified it did not seek to recover twice for the same sums.
85. The invoices that are the subject of the claim are monthly invoices for the costs of supplying fencing and plant at the site between September 2016 and October 2017, when little progress was made on site other than site clearance and what are described as "standstill charges". The monthly charges are £11,960, being weekly charges at

£490 per week for hire of plant and fencing and £10,000 per month standstill charges. However, there is no contractual entitlement to these sums. Nor is there any evidence that the amounts were agreed between the parties.

86. Mr Matharu accepted in his oral evidence that the invoices dated between 1 September 2016 and 1 May 2017, which are numbered 20180A to 20180H, may have been issued at the same time as each other, as it is not the Claimant's usual practice to number invoices with letters after the numbers. By May 2017, it is clear that the question of whether the Defendant would honour the Contract was, at least, seriously in doubt. The correspondence shows that the Claimant had said it intended to remove the plant and fencing from the site unless it received payment.
87. In oral evidence, Mr Ubhi and Mr Matharu explained that the figure of £10,000 represented the directors' lost earnings, since they would have expected to each earn £5,000 per month from the Claimant while performing the Contract, and they had lost income as a result of being on site ready to perform the Contract. It is clear to me that the figure of £10,000 in each of the invoices is really a claim for the Claimant's lost profit and, if the Claimant were to recover the standstill charges as well as its claim for lost profit, it would make a double recovery for the same loss.
88. The remainder of the sums invoiced are for hire charges for plant, including cabins, toilet facilities, canteen facilities and Heras fencing for the site. This was charged at £490 per week. Although the Claimant has not produced detailed documentary evidence of the actual hire charges it incurred, there is documentary evidence that it had had the items on hire and that, in June 2017, the Claimant requested the removal of four units, including a canteen, and that there would be early termination charges due to the hire contract running until 1 March 2018. I am satisfied that the Claimant

incurred a cost in hiring fencing and plant so it was able to clear the site and be ready to perform the Contract, which it is entitled to recover as damages for the Defendant's breach of contract for failing to honour the Contract. I will allow the charges for plant and machinery at £490 per week claimed in the Claimant's invoices identified in the Particulars of Claim, but will not allow the standstill charges, which would amount to a double recovery of the Claimant's lost profit.

WHAT IS THE CLAIMANT'S RECOVERABLE LOSS?

89. The Claimant claims £279,675 by way of lost profit, being 20% of the contract price of the Contract, on the basis that its expected profit from the contract was 20%. The parties agreed at the CCMC that, in the absence of any pleaded case on the part of the Defendant as to an alternative basis for calculation of the profit, no expert evidence was needed as to the appropriate level of profit, although the Defendant put the Claimant to proof of its loss. The Defendant argues that, in the absence of detailed evidence as to the Claimant's likely costs to perform the contract, the Claimant has failed to prove its lost profit. The Claimant's evidence is that it built a 20% profit margin into its price. In addition, I note that the contract price for the contract with the contractor who replaced the Claimant and build the houses was considerably lower than the price under the Contract. The Claimant's price was £1,398,375. The replacement contractor's price was £1,179,456. Mr Bajwa confirmed in his oral evidence that it was for the same work. The replacement contractor's price for the same work was nearly 16% lower than the Claimant's price. Knowing that the replacement contractor was able to do the same work so substantially more cheaply, I do not have any difficulty in accepting the Claimant's evidence that it had a 20%

profit margin in its price. Further, there is no evidence before me that a 20% profit is excessive for a contract of this type. The only evidence I have as to the likely actual loss profit is that of the Claimant, which is that it expected to make a 20% profit from the Contract. I accept that evidence and will award that sum to the Claimant, being £279,675.

CONCLUSION

90. The Claimant is entitled to the hire charges claimed in its invoices, which I calculate to be £27,440 and to lost profit in the sum of £279,675, being £307,115.