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Practical Lessons from Placefirst v CAR Construction: Substance Over Form in Construction Contract Notices

Placefirst Construction Ltd v CAR Construction (North East) Ltd [2025] EWHC 100 (TCC)

Date: 24 January 2025

Judge: HHJ Stephen Davies sitting as a Judge of the High Court

Key Words:

Adjudication and Enforcement, Payment Notice and Payless Notice, Interim Payment Application, Construction Contract, Notified Sum, Statutory Provisions, Objective Interpretation, Substance over Form, Intention of the Parties, Timing of Notices, Validity of Notices, Common sense and practical view, Case Management, Legal Principles

Summary

This case concerns a dispute between Placefirst Construction Ltd (Placefirst), the contractor, and CAR Construction (North East) Limited (CAR), the subcontractor, over an adjudicator's decision regarding an interim payment [1]. The adjudicator had ordered Placefirst to pay CAR £867,031.36 plus VAT due to Placefirst's failure to serve a valid payment or payless notice [1]. Placefirst sought a court declaration that it had served valid notices, rendering enforcement of the adjudicator's decision unconscionable [3]. The court ruled in favour of Placefirst, finding that valid payless and, if necessary, payment notices had been served, overturning the adjudicator's decision [13-17].

Key Themes:

1. ***Construction Contract Payment Notices:*** *The case focuses on interpreting and applying the payment provisions within the Housing Grants, Construction and Regeneration Act 1996 (as amended) and the subcontract, specifically regarding payment and payless notices [12, 20].*
2. ***Validity of Notices:*** *The central issue was whether Placefirst's notices met the legal requirements to qualify as valid payment or payless notices [3, 12].*
3. **Objective Interpretation:** The court stressed objectively interpreting contractual notices, considering how a reasonable recipient would understand them [47(i)-(iv)].
4. **Interplay of Payment and Payless Notices:** The court analysed the relationship between payment and payless notices, including whether one document could serve both purposes and

the timing requirements for each [12-14, 68].

Background

- Placefirst was the main contractor, and CAR was the subcontractor for a construction project in Durham [18].
- The parties used an amended JCT Design and Build 2016 form of subcontract [19].
- The contract established a payment schedule with interim payments due 16 days after the month's end, and a final payment date 12 days after the due date [21].
- CAR was required to submit interim payment applications by the 25th of each month [22].
- Placefirst had to issue a payment notice within 5 days after the due date and could issue a payless notice no later than 2 days before the final payment date [23, 24].
- CAR submitted an interim payment application on 24 July 2024 [27].
- On 31 July 2024, Placefirst sent an email titled: “CAR Construction Payless Notice and Valuation 30,” attaching a PDF ("Valuation 30 - Payless Notice.pdf") and an Excel file ("Valuation 30.xlsm") [28-30]. This communication was the subject of the dispute [28].
- The email stated a balance due to CAR of minus £22,812.15 [33].
- The attached PDF was a payless notice [65].
- The Excel file contained several worksheets, including a “summary” tab and a “payment certificate” tab, which Placefirst claimed was a payment certificate [34].

Legal Issues and Analysis

Issue 1: Validity of the Payless Notice

- CAR argued Placefirst’s payless notice was invalid because it was served prematurely under the Act [41].
- The court examined s.111(5)(b) of the Act, which prevents a payless notice from being served before the notice determining the notified sum [42]
- The court found CAR’s interim payment application met the requirements of a payment notice under s.110A(3) of the Act [52].
- It concluded that s.110A(3) applies via s.111(2)(c) and s.110B, which addresses payee payment notices in the absence of a payer’s payment notice [53].
- The court rejected the argument that the payless notice could not be served before the due date for the payer’s payment notice, concluding the payless notice was valid under the amended subcontract terms [57-65].

Issue 2: Did Placefirst Serve a Valid Payment Notice

- The court considered whether Placefirst's email and attachments, particularly the "subcontract payment certificate" worksheet, constituted a valid payment notice [12a, 70, 71].
- It clarified that in this instance, under an amended standard form of subcontract, payment and payless notices required the same content, and one notice cannot serve as both [66, 68].
- CAR argued the worksheet was not a valid payment notice because it was labelled as a "subcontract payment certificate," did not state the amount due, and supported the payless notice [72].
- Placefirst contended the worksheet was a valuation as expected in a payment notice [74].
- The court concluded the worksheet objectively demonstrated the intention to serve as a

separate payment notice and was not purely subsidiary to the payless notice [85].

- It also held that a payment notice under the amended subcontract did not need to explicitly state the sum due at the due date [80].
- The court noted a payment notice can state a negative sum [82] and that the format's similarity to previous payment cycles or CAR's reference to the email as a payless notice was irrelevant [83].
- It concluded that the worksheet, read with other communications, was intended to be a payment notice [85].

Conclusion

The court found that Placefirst had served a valid payless notice on 31 July 2024 [88]. It also determined that Placefirst served a valid payment notice, though this was unnecessary due to the validity of the payless notice [16, 17, 75, 85, 86].

The adjudicator's decision was deemed incorrect, and his ruling that Placefirst should pay the amount in CAR's interim payment application was not enforced [16, 17]. The court clarified that its decision was based on the arguments presented and did not criticise the adjudicator, whose reasoning was detailed and careful [17].

Key Takeaway:

The judgment highlights that courts adopt a practical, common-sense approach to interpreting construction contract payment notices, focusing on the objective intention of the parties [47iv)]. A payment notice does not need to be explicitly labelled as such, as long as it clearly functions as a payment notice under the contract and the Act [47viii), 85, 86]. This case emphasises the importance of substance over form when assessing the validity of payment and payless notices [45v)-viii)]. It also clarifies the interrelationship of the Act's payment provisions and the roles of payment and payless notices [58, 59, 68].

Parting Thoughts - Navigating Legal Technicalities: A Matter of Context

In construction contract disputes, the key lesson from Placefirst Construction Ltd v Car Construction (North East) Ltd is that substance outweighs formality. The court emphasised the objective interpretation of notices, focusing on how a reasonable recipient would understand them, rather than relying on overly legalistic readings.

The judgment illustrates that a "subcontract payment certificate" worksheet, though not explicitly labelled, can serve as a valid payment notice if it contains the required information and is intended as such. The court also clarified that payment and payless notices share identical content and can be issued simultaneously. However, serving both is unnecessary—one or the other suffices to achieve the intended purpose.

The case underscores the importance of reviewing all communications between parties. Even if a payment notice lacks explicit labelling, it will be considered valid if it contains the necessary information. Ultimately, the ruling promotes resolving disputes by focusing on practical realities and the intent behind notices, avoiding reliance on artificial technicalities or overly narrow legal arguments.

#ConstructionLaw #Adjudication #ConstructionAdjudication #PaymentNotice #PaylessNotice #InterimPayment #ConstructionContract #NotifiedSum #StatutoryInterpretation #ObjectiveInterpretation #SubstanceOverForm

#ContractualNotices #ConstructionDisputes #PaymentDispute #TCC #CaseManagement #LegalPrinciples #CommonSense #HGCRA #CARConstruction #PlacefirstConstruction

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MATTERS ARISING

A measured conversation arising from the judgment in *Placefirst Construction Ltd v CAR Construction (North East) Ltd* [2025] EWHC 100 (TCC).

Two documents. Same email. Same figure. £867,000 at stake.

This week George and Archie discuss payment notices.

GEORGE:
The adjudicator ordered £867,000 to be paid.

ARCHIE:
Yes. No valid payment notice. No valid pay less notice. The usual statutory consequences.

GEORGE:
But the High Court overturned it.

ARCHIE:
Because there was a valid payment notice.

GEORGE:
Which document was that?

ARCHIE:
An Excel spreadsheet titled “Subcontract Payment Certificate.”

GEORGE:
Recognised by the contract?

ARCHIE:
Not at all.

GEORGE:
Did it describe itself as a payment notice?

ARCHIE:
No.

GEORGE:
And it was sent under an email headed “Payless Notice”?

ARCHIE:
Correct.

GEORGE:
So the payless notice contained the payment notice.

ARCHIE:
Objectively construed, yes. It set out the sum considered due and the basis of calculation. That is what the statute requires.

GEORGE:
What sum did it establish?

ARCHIE:
Minus £22,000.

GEORGE:
A negative notified sum?

ARCHIE:
Yes.

GEORGE:
And the attached PDF then operated as the payless notice?

ARCHIE:
Indeed.

GEORGE:
Reducing the notified sum to…?

ARCHIE:
Exactly minus £22,000.

GEORGE:
So both documents stated precisely the same figure.

ARCHIE:
They did.

GEORGE:
Why not just serve one document?

ARCHIE:
Because one document cannot perform both statutory functions. The payment notice must exist first. The payless notice must respond to it.

GEORGE:
Even if they say exactly the same thing?

ARCHIE:
The distinction is structural, not arithmetical.

GEORGE:
So two documents. Same email. Same figure. Different legal hats.

ARCHIE:
A careful observance of statutory sequencing.

GEORGE:
Substance over form?

ARCHIE:
Substance, achieved through form.

GEORGE:
I'll remember that when issuing my next invoice.

Professional Commentary

This decision is another reminder that payment provisions under the Housing Grants, Construction and Regeneration Act 1996 are interpreted through a practical, objective lens. Labels are not determinative; function and content are. If a document sets out the sum considered due and the basis of its calculation, it may qualify as a payment notice — even if mislabelled, even if attached to a differently headed email, and even if mirrored by a contemporaneous payless notice stating the same figure. The court's emphasis was not on terminology but on statutory sequencing and commercial substance. For practitioners, the lesson is straightforward: precision in timing and structure remains critical, but arguments based purely on nomenclature will rarely succeed.

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