



Neutral Citation Number: [2020] EWHC 1801 (TCC)

Case No: HT-2020-LDS-000005

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
TECHNOLOGY AND CONSTRUCTION COURT (QBD)

Leeds Combined Court Centre
1 Oxford Row, Leeds LS1 3BG

Date: 7 July 2020

Before :

HIS HONOUR JUDGE DAVIS-WHITE QC
(SITTING AS A JUDGE OF THE HIGH COURT)

Between :

FARAD MAFTOON
T/A FM CONSTRUCTION SERVICES

Claimant

- and -

(1) AHMED SAYED
(2) LEBANEAT (YARM) LIMITED

Defendants

Mr Simon Arnold (instructed by **Hay & Kilner LLP**) for the **Claimant**
The First Defendant in person
The **Second Defendant** by its director Mr Ahmed Sayed

Hearing dates: 26 June 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE DAVIS-WHITE QC (SITTING AS A JUDGE OF THE HIGH COURT)

HH Judge Davis-White QC :

Introduction

1. In September 2018, the Claimant, Mr Farad Maftoon trading as FM Construction Services (“Mr Maftoon”), entered into a contract for building works, involving demolition and shopfitting, at a restaurant at 48, High Street, Yarm, North Yorkshire. The question before me is whether he entered into that contract with the First Defendant Mr Ahmed Sayed (“Mr Sayed”), acting in a personal capacity, or with the Second Defendant, Lebaneat (Yarm) Ltd, acting by its director, Mr Sayed.
2. The current proceedings were commenced by Part 8 claim form issued on 22 April 2020.
3. The immediate background to the proceedings involves adjudication proceedings brought by Mr Maftoon against Mr Sayed pursuant to the Housing Grants, Construction and Regeneration Act 1996. In those proceedings, Mr Maftoon sought payment of what was described as payment number five dated 21 August 2019 in the sum of £162,948, with interest thereon. It was asserted that no “Pay-Less Notice” had been served. Mr David Blake DipArb, FRICS, FCI Arb of Blake Newport (the “Adjudicator”) was appointed adjudicator on 4 December 2019.
4. An initial jurisdictional challenge was raised by Mr Sayed. He asserted, as he does in these proceedings, that the relevant contract was entered into by him on behalf of Lebaneat (Yarm) Limited (the “Company”) rather than by him personally. Following the submission of written evidence and submissions, by email dated 27 December 2019, Mr Blake resigned as adjudicator. This was on the basis of his conclusion, on the balance of probabilities, that the contracting party was indeed the Company rather than Mr Sayed personally. The result of that conclusion was that Mr Blake considered that he did not have jurisdiction and should resign.
5. In his email of 27 December 2019, Mr Blake pointed out that he had no power to make a binding decision in respect of his own jurisdiction in respect of the issue before him. Accordingly, these proceedings were launched with a view to obtaining a binding decision determining the issue of the identity of the parties to the contract.
6. I should also explain that before the Adjudicator, the points were taken, as they were before me, that the works completed by Mr Maftoon were of poor quality, that the price had been unilaterally increased and that the works were delayed so that the Company had suffered losses close to £500,000.

Representation

7. Mr Simon Arnold appeared on behalf of the Claimant. Mr Sayed appeared in person. Mr Sayed also sought permission to appear on behalf of the second defendant, which application I granted. He also invited me to hear from Ms Oana Cotoi, described in the papers before me as the Operations Manager for Mr Sayed’s companies. The explanation for this request was that she was said to be more involved in certain matters and to be able to give me further information. As I pointed out, the court had

laid down a timetable for the provision of written evidence which had been agreed between the parties. No written evidence had been provided from Ms Cotoi. I was not prepared to hear further evidence, orally, the first time from Ms Cotoi. Mr Sayed was clearly capable of representing the Company and there seemed no reason to allow another person to address me on its behalf. Accordingly, I refused this latter application.

8. Mr Sayed largely relied on the arguments already set out in the documents before me, including the written representations made to the Adjudicator. That written submission ends with a statement of truth, signed by the solicitor acting for the (now) Defendants, and which confirms his authority to sign the submission and confirming also that Mr Sayed believes that the contents of the submission are true.

The Evidence

9. As I have said, shortly after issue of the claim form the parties agreed a timetable for written evidence. No direction for cross examination was sought or made. The parties confirmed to me that they were content for the matter to be decided on the written evidence before the court. That meant that, the burden of proof lying on the claimant, where there was a dispute of fact raised on the evidence I would be unable to resolve the same and, unless the defendants' evidence was such that it could not be believed, for example because of other incontrovertible evidence or for lack of inherent consistency, I would have to accept the defendant's evidence (see e.g. *Re Lo Line Electric Motors Limited* [1987] Ch 447 and *Day v RAC Motoring Services Ltd* [1999] 1 All E.R. 1007).
10. Mr Sayed's witness statement did not contain the form of the statement of truth required by CPR PD 22 (it was in the more limited form prior to recent changes in the rules of court). Before me, Mr Sayed confirmed orally that the terms of the current statement of truth (which I took him through) applied to the statement. In light of that process, Mr Arnold did not object to the statement being received into evidence.

Background

11. Mr Maftoon has traded under the name "FM Construction Services" for nearly 30 years. He has a particular specialism in the leisure sector and regularly undertakes high specification restaurant fit out works. He has previously carried out "fit out work" for Mr Sayed, or his companies, on a number of occasions, including two Lebanese restaurants under the "Lebneat" name at North Bailey and Young Street in Durham.
12. Mr Sayed is a restaurateur. At various times he has opened restaurants in Durham and Yarm. In Durham he has operated the Lebneat Wrap House at 69, Claypath, Durham, the Lebneat Express at 37, Young Street, Durham and Lebneat at 47, North Bailey, Durham. The Lebneat restaurant businesses have their own website but at all material times it was impossible to tell from that website that any of the restaurants or the restaurant businesses were operated or owned by one or more limited companies, let alone the identity of any such companies.
13. Mr Sayed has operated the relevant restaurants through limited companies. Lebneat (Durham) Ltd is the main operating company. It runs the main Lebneat restaurant on

North Bailey, Durham. Lebaneat (Wrap House) Ltd operates the takeaway outlets known as Lebaneat Express at Young Street, Durham and the Wrap House at Clayparth, Durham. Lebaneat (Yarm) Limited is the company operating the restaurant at Yarm. In each case Mr Sayed is, as I understand it one of, or the sole director of, the company in question which is wholly or in part owned by him and/or family interests of his.

14. Each of Mr Sayed and Mr Maftoon rely upon prior dealings between them in which Mr Maftoon carried out work for Mr Sayed on his restaurants/outlets.
 - i) Mr Maftoon says that his recollection is that he contracted with Mr Sayed in respect of those projects. He has no particular knowledge of Mr Sayed's business structures although he was aware that he operated a number of Lebanese style restaurants under the "Lebaneat moniker"
 - ii) Mr Sayed says that Mr Maftoon, when dealing with Mr Sayed, knew that Mr Sayed was acting for and on behalf of limited companies and not personally. In this respect he relies on an invoice dated 12 July 2016 which is addressed to "Lebaneat express". He says that this shows that Mr Maftoon knew that the contract was not with him but one with his company and that, just as that had been the case in 2016 so it was in 2018.

General: Correspondence, web pages for Lebaneat, footers for emails

15. Save, where I make clear below, none of the emails from Mr Sayed or Lebaneat which I refer to below have any text identifying any limited company, whether by name, officer or anything else. Similarly, the email addresses used to send emails from or to persons at Lebaneat do not clearly identify any limited company involvement. The website for the Lebaneat restaurants also fails to mention or identify any limited company. The significance of this is that these matters do not provide material from which it might be inferred that Mr Maftoon did in fact know that in his dealings with Mr Sayed, Mr Sayed was acting on behalf of the company.

The Initial Quote: 20 February 2018

16. Mr Sayed approached Mr Maftoon, in about February 2018, to assist in building works at his latest proposed Lebaneat restaurant which was to be situated at 48, High Street, Yarm (the "Yarm Premises"). At this stage Mr Sayed had not secured a lease for the Yarm Premises, not had the Company been incorporated. At this stage the Yarm Premises had had most recently been used as the branch of a bank.
17. Mr Maftoon says that at no point during the discussions between them did Mr Sayed say he was inquiring on behalf of a company and that he, Mr Maftoon, therefore assumed that any contract was to be with Mr Sayed personally.
18. On 20 February 2018 at about 08:19 Mr Maftoon emailed Mr Sayed a quote for certain demolition and plastering works at the Yarm Premises (the "Initial Quote").
19. Work could not proceed immediately, no lease had been granted to Mr Sayed (or any of his companies) and a change of use had to be applied for. In light of the history of exchanges below it is clear that Mr Maftoon is clearly mistaken when in his witness

statement he suggests that after provision of the Initial Quote he did not hear from Mr Sayed until early September 2019.

20. The Company was incorporated on 13 March 2018.
21. On 23 April 2018, Mr Maftoon informed Mr Sayed by e-mail that he was unable to take on the work as he was committed to another major job in Scotland.
22. However, in August 2018, Mr Maftoon told Mr Sayed that he could after all take on the proposed works.
23. There are a number of communications between Mr Maftoon and Mr Boyce of Mario Minchella Architects who were responsible for the drawings for the works. However, none of the documents in evidence were identified to me as revealing that Mario Minchella regarded the Company as its client and that this was communicated to Mr Maftoon.
24. By email dated 11 September 2018, Mr Maftoon informed Mr Sayed that he had received the relevant drawings for the job and was putting a price together. He also said that he was “*arranging the guys to start the demolition works this week, just for you!*” and asked if Mr Sayed could sort out a deposit for him in respect of the demolition works.

15 September Estimate

25. By email dated 15 September 2018, sent out about 11:57, Mr Mafood wrote to Mr Sayed at “contact@lebaneat.co.uk” (“15 September Estimate”). I note that this email address (“[.co.uk](mailto:contact@lebaneat.co.uk)”) does not make clear that a company is involved. It is quite a usual form of email address used by individuals as well as companies. In the email Mr Maftoon said that he was preparing a fixed quotation for the complete works at Yarm. The work was to include the demolition and associated works previously the subject of the Initial Quote, plus first fix electrical plumbing and joinery work and the fit out of the restaurant according to drawings and a schedule of works provided by MM Architects. The estimate was around £100,000 plus VAT. The email went on to say that he was planning to start clearing the unit on Monday 17 September and asking for the transfer of £40,000 plus vat to “our” account, details of which were then given. An invoice was said to be produced on “acceptance of this transaction”. The email at times speaks in the first person (“I am preparing a fixed quotation...” and at other times in the third person “Our price will be...”).
26. This is consistent with Mr Maftoon’s evidence that he was told by Mr Sayed that Mr Sayed wanted to proceed with the relevant works as soon as possible, starting on Monday 17 September so that trading from the premises could begin as soon as possible.
27. Mr Maftoon sent a further email on 15 September 2018 at about 21:03 addressed to “contact@lebaneat.co.uk”. The salutation was “Hi Ahmad” and went on to advise that the payment of £40,000 should be suspended till an ongoing audit by his, Mr Maftoon’s bank was completed. The audit was said to have been put in progress because a client had paid in a bad cheque earlier that day. The email asked if Mr Sayed had sent a cheque and also whether Mr Sayed could tell him when the payment

would be sorted out, because Mr Maftoon would have to email him details of “our” new account.

28. According to Mr Maftoon, Mr Sayed rang him after receipt of the 15 September Estimate and accepted it. At no point, says Mr Maftoon, did Mr Sayed tell him that he, Mr Sayed, was acting on behalf of the Company or that the contract was to be with the Company. Mr Sayed, in his evidence, does not challenge this evidence of Mr Maftoon.
29. It appears that the lease of the Yarm premises, for a 10 year term, was dated 17 September 2020 and granted to Lebaneat (Yarm) Limited. Lebaneat (Durham) Limited was also a party, I infer as surety for the Company. Title was registered on 1 October 2018.
30. Mr Maftoon says that it was on this day that he started works at the Yarm Property.
31. By email sent on 17 September 2018 at about 09:47, Mr Maftoon wrote to Mr Sayed asking him if he had received his previous email, apparently being that sent on 15 September 2018 at about 21:03 asking about the £40,000 payment.
32. By email dated 17 September 2018 and sent at about 18:47, Mr Sayed wrote as follows:

*“hi farad I confirm I received your email and we happy to go ahead
Thanks Ahmed”*

33. In the written submissions made to the Adjudicator, it was said on behalf of Mr Sayed, that it was accepted that a contract for works to the Yarm Premises was agreed on 15 September 2018. However, in his written evidence to this court, Mr Sayed denies that any contract was made until the evening of 17 September, being the day that the Company entered into the lease of the Yarm Premises. He says that the acceptance is contained in his email of that date sent at about 18:47.
34. Before me, and before the Adjudicator, it was also submitted that Mr Sayed would have used the word “I” (instead of “we”) if he had been contracting with Mr Maftoon in a personal capacity. This submission appears to have found favour with the Adjudicator and to have been a main ground for his decision.

September 2018 to March 2019

35. During the contract various invoices from other suppliers to the product were provided, directly or indirectly, to Mr Maftoon but I cannot see any indication on them that the Company was involved in the project.
36. Payments were made by the Company as follows:

21 September 2018: £17,000
28 September 2018: £10,000
16 November 2018: £10,000
3 December 2018: £10,000
12 December 2018: £ 8,000

21 December 2018: £10,000
Total: £65,000

37. Mr Maftoon appears to have prepared an invoice dated 22 December 2018 in the sum of £40,000 plus £8,000 VAT being in respect of “stage payment one”. The invoice was addressed to “Lebaneat Ltd”. This invoice was sent by him to Ms Oana Cotoi by email dated 24 January 2019. The relevant email addresses to which the email was sent were contact@lebaneat.co.uk (apparently Oana Cotoi’s email address) and copied to secretary@lebaneat.co.uk. The email attached the invoice dated 22 December 2018 “for the payments so far”. The cost of the project to date was said to be £58,000 plus VAT of which some £40,000 plus VAT had been received at that date. The email confirmed that, as advised in December, “we” would need a further £30k plus VAT to complete the next phase of the project by the end of the month. The email was signed by Mr Maftoon. Mr Sayed accepts that, by this stage, some £48,000 had been paid in respect of actual bills. The initial £17,000 was “a deposit”.
38. In his written evidence, Mr Maftoon says that the invoice was an error in that Lebaneat Limited does not exist. However, he says, he addressed the invoice in this way at Mr Sayed’s request. Mr Sayed’s explanation to him for this request was that he needed to use a different account to pay the deposit and accordingly wanted the invoice made out in this way.
39. Mr Sayed does not address this point at all in his evidence. Instead he simply says that Mr Maftoon had the wrong name but that he “*automatically invoiced a company, rather than an individual*”.
40. A second invoice from Mr Maftoon was dated 13 February 2019 and was addressed to “Lebaneat”. It was for “Stage Payment 2” in a sum of £20,000 plus VAT of £4,000. The covering email refers to this having been agreed with Mr Sayed.
41. The Company appears to have paid the second invoice in full on 28 February 2019.

March 2019: correspondence regarding the DVO and business rates

42. By email dated 11 March 2019 sent to Mr Maftoon, Ms Cotoi explained that the Company had applied to the District Valuation Office (“DVO”) for an exemption for the premises from business rates, whilst works were being carried out. She explained that the DVO required a number of documents, listed in the email, including “signed contracts”. She asked if Mr Maftoon could help.
43. Having said that he could help and after various other emails, by further email of 11 March 2019, Mr Maftoon wrote to Ms Cotoi as follows:
- “As we do not have any written contract, if you or Ahmed sign and send me back the original quotation I sent him then I will include that the package for you. I can sort the rest out.”*
44. The written submissions for Mr Sayed before the Adjudicator, submit that the fact that Mr Maftoon was content that Ms Cotoi or Mr Sayed could sign the contractual document was evidence that the contract was with the Company rather than Mr Sayed personally. The basis of that submission was that Ms Cotoi was an officer of the

company and if the contract was only with Mr Sayed personally he would not have been prepared to accept the signature of one of the Company's officers. I do not understand Ms Cotoi to be an officer of the Company within the meaning of the Companies Act 2006 (ie. she was not a director or the company secretary). As regards her position as "Operations Manager" see paragraph 48 below.

45. Mr Maftoon's evidence is that he understood that Ms Cotoi was Mr Sayed's assistant and was content for her to sign on behalf of Mr Sayed.
46. There is no evidence to gainsay what Mr Maftoon says about his state of knowledge about Ms Cotoi.
47. It appears that about this time Mr Sayed wrote further information at the bottom of the September 15 Quotation (or indeed, on a separate "second" sheet to it). The additions were all in manuscript. First he wrote: "Accepted by Lebaneat (Yarm) Limited" and then four further items, signature (with his manuscript signature), name (with his full names written in capitals), position (with the word "director" in capitals filed in) and "acceptance date" with the date of 15 September 2018 inserted.
48. It is said that this document was sent to Mr Maftoon on about 13 March 2019, although that is not clear to me from the contemporaneous documents. Mr Maftoon says that he did not see it until later as it was one of many documents sent via dropbox. Precisely when he saw it does not matter. A whole bunch of documents were sent by Ms Cotoi to the DVA under cover of an email sent on 14 March 2019. The description under her name is "Operations Manager Lebaneat Head Office with an address and telephone numbers and an email address being the "contact@lebaneat.co.uk" address. There is no evidence that the matter was expressly brought to Mr Maftoon's attention or, for example, that there were any discussions about the insertion of the acceptance by the Company.
49. Invoice for Stage payment 3 is dated 16 May 2019 and was sent by email dated of that date. It is made out to "Lebaneat" at the Yarm address in the sum of £20,000 plus VAT of £4,000. This is significant. At this point the question of the contracting party, Mr Sayed or the Company had not arisen.
50. The fourth and "final" invoice was dated 17 June 2019, and made out to Ahmed Sayed, Lebaneat, at the Yarm address. The total cost was said to be £167,680 which, after taking account sums paid plus a retention, but also including the unpaid third invoice, resulted in a sum of £103,488 being due plus VAT of £20,697.
51. By email dated 22 August 2019, Mr Maftoon enclosed a further invoice, Application 5, which was said to update the final 4th invoice to take account of "further outstanding sums".
52. Application 5 was dated 21 August 2019 and was a final application for payment. It was addressed to Ahmad Sayed. At this stage, no point was taken that the invoice was addressed incorrectly. The invoice was in the sum of £135,790 plus VAT.
53. The last piece of contemporaneous evidence relied upon before me is the accounts of Lebaneat (Yarm) Limited for the year ended 31 March 2019. These were approved by its board of directors on 15 November 2019. They are so-called "dormant

company” accounts, the company asserting that it was entitled to exemption under s400 Companies Act 1985.

54. In written submission to the Adjudicator, it was said on behalf of Mr Sayed that the dormant company accounts were filed by the Company on the advice of the Company’s accountants. The main reason for the advice was said to be that the restaurant at the Yarm Premises did not open until June 2019, after the end of the period of the dormant accounts. Mr Maftoon relies upon the accounts as confirming that the Company was not trading and therefore did not enter into any contract with him at the relevant time.

***Hamid v Francis Bradshaw Partnership* [2013] EWCA Civ 430**

55. For Mr Maftoon, great reliance is placed by Mr Arnold, on *Hamid v Francis Bradshaw Partnership* [2013] EWCA Civ 430 (the “Hamid case”). The facts in that case bore a striking similarity to the facts in this case. The issue was whether a contract, under which Francis Bradshaw Partnership (the “FBP”) was employed to provide engineering services on a building project, had been entered into by Dr Hamid or his company Chad Furniture Store Limited (“Chad”). The contract was partly written and partly oral.
56. Dr Hamid was the sole director and sole shareholder of Chad. Chad was in the business of selling furniture and traded under the name “Moon Furniture”. Dr Hamid traded sometimes through Chad and sometimes personally, operating under the name Hamid Properties.
57. A letter signed by Dr Hamid on “Moon Furniture” headed paper referred to earlier conversations and letters and agreed to pay certain fees for certain stages of the work. It was signed by Dr Hamid over the description “Moon Furniture”. There was no reference to Chad or to any limited company or limited company details (such as incorporation number etc).
58. Dr Hamid was dissatisfied with the work carried out by FBP and sued it for damages said to flow from the breach of contract (said to have caused defects in retaining walls built on his property). FBP asserted that its contract was with Chad. There was no understandable tactical reason for that defence. If Chad were the party there was an argument that it suffered no loss because it did not own the building. In this case there is a similar tactical reason for the assertion by Mr Maftoon that his contract was with Mr Sayed and not the Company. If it was, then the losses he relies upon from delays and defects may be irrecoverable because they are said to have been suffered by the Company which, on that hypothesis would have no cause of action,
59. The Judge held that the party who engaged FBP was Dr Hamid personally and not Chad. FBP appealed. In the Court of Appeal, Jackson LJ gave the judgment with which McCombe and Rix LJJ agreed.
60. Having reviewed a number of authorities dating back to 1918, Jackson LJ summarised the relevant law as follows:

“[57] *In my view the principles which emerge from this line of authorities are the following:*

- (i) *Where an issue arises as to the identity of a party referred to in a deed or contract, extrinsic evidence is admissible to assist the resolution of that issue.*
- (ii) *In determining the identity of the contracting party, the court's approach is objective, not subjective. The question is what a reasonable person, furnished with the relevant information, would conclude. The private thoughts of the protagonists concerning who was contracting with whom are irrelevant and inadmissible.*
- (iii) *If the extrinsic evidence establishes that a party has been misdescribed in the document, the court may correct that error as a matter of construction without any need for formal rectification.*
- (iv) *Where the issue is whether a party signed a document as principal or as agent for someone else, there is no automatic relaxation of the parol evidence rule. The person who signed is the contracting party unless (a) the document makes clear that he signed as agent for a sufficiently identified principal or as the officer of a sufficiently identified company, or (b) extrinsic evidence establishes that both parties knew he was signing as agent or company officer.*

[58]. In my fourth proposition the phrase 'sufficiently identified' is not a happy one. It is intended to include cases where there is an inconsequential misdescription of the entity on behalf of whom the individual was signing. This is exemplified by Badgerhill Properties."

- 61. In *Badgerhill Properties Ltd v Cottrell* [1991] BCC 463, the Court of Appeal held that acceptances of two written estimate provided under the trading name "The Plumbing Centre" was a contract by the accepting defendant with whatever company was trading under the trading name "The Plumbing Centre". As regards a third estimate it was a contract with whichever company was trading under the trading name "Wendell (Builders)" (being the name on the top of the estimate). [However, as pointed out by Jackson LJ in the Hamid case (at paragraph [53]), crucial features of the case were that the estimates put forward had been signed by the relevant individual expressly as (with the description) "director" and that the name of the company was printed at the foot of the page with one small inconsequential error.
- 62. In the Hamid case, Jackson LJ said that the central issue was not one of "identity" but capacity: was Dr Hamid contracting personally or signing the letter as director or agent of Chad? So it is in this case. Was Mr Sayed contracting personally or as director or agent of the Company?
- 63. The signature of Dr Hamid resulted in him becoming a contracting party unless he qualified his signature or otherwise made it plain that the contract did not bind him personally. On that point, Jackson LJ was in no doubt that the mere reference to "Moon Furniture" without any indication that this was the trading name of Chad (or indeed any limited company) was not an effective qualification.
- 64. At paragraphs [67] and [68], Jackson LJ considered the position from a counterfactual position: supposing Chad had sued FBP and suppose that FBP's defence was

that it contracted with Dr Hamid, not Chad. Chad's case would have been "untenable". They would have to say something like this (which would be "doomed to failure")

"We, Chad Furniture Store Ltd, engaged you as our engineers. Unfortunately none of the statutorily required company details are shown on the letter of 10th March 2004. Also Dr Hamid forgot to put "director" after his signature, but that is what he meant. Furthermore we never told you that Moon Furniture was the trading name of Chad Furniture Store Ltd, but you could have found that out by making independent inquiries. We did not even tell you that a limited company was involved. But you really should have guessed that by looking at the email address and doing a spot of detective work."

65. He went on to say:

"[69] ... The extrinsic evidence, in so far as it is admissible, does not assist FBP. At no stage before the contract was concluded did anyone tell FBP that Moon Furniture was a limited company. Apparently Mr Preugschat [the individual acting for FBP] made an assumption to that effect. That, however, is neither here nor there. Mr Preugschat's private thoughts are not relevant or even admissible in evidence.

[70]. It is quite true that if FBP had made inquiries, then one way or another they could and probably would have ascertained that Moon Furniture was the trading name of Chad. In my view, however, inquiries which could have been made but were not made are irrelevant to the present issue."

66. Jackson LJ ended by saying that he found the reasons which the judge had given for his decision to be "convincing". Like him, he concluded that Dr Hamid not Chad was the party which contracted with FBP. As regards the Judge's reasons he had earlier summarised these as follows:

"[29]The judge gave seven reasons for his decision, which I would summarise as follows:

- i) FBP were not told that the client was a limited company. They were told that Dr Hamid was the owner of the Moon Furniture business.*
- ii) The letter of 10th March 2004 contained no indication that Moon Furniture was a limited company. Dr Hamid did not describe himself as "director". The reasonable inference from these circumstances was that Moon Furniture was not a limited company.*
- iii) A reasonable person analysing the letter objectively would conclude that Moon Furniture was Dr Hamid and that he used the pronoun "we" when writing as Moon Furniture.*
- iv) Dr Hamid signed the letter of 10th March 2004 without making it clear that he was not contracting personally.*
- v) Extrinsic evidence existed to show that Moon Furniture was the trading name of Chad. Nevertheless Mr Preugschat was unaware of that evidence. Therefore it was irrelevant."*
- vi) Where the issue is whether someone contracted personally or as agent, there is not to be imputed to the other party knowledge which he did not have.*

vii) The authorities relied upon by FBP concerning mistakes in the naming of contracting parties should be distinguished.”

67. I was referred to a number of other authorities and to passages from *Bowstead & Reynolds on Agency* (21st Edn) but in my judgment that Hamad case adequately sets out the relevant principles for present purposes.

Discussion

68. The 15 September Estimate was addressed to Mr Sayed personally. Whether or not he accepted it orally on that date, there is no suggestion by Mr Sayed in his evidence that he made clear in express terms that he was contracting as the Company, acting as director, or as agent for the Company. When he agreed on 17 September 2018 by email to the works going ahead, assuming that to be the formation of the contract by acceptance, there was no indication in the email that he was acting as, or as agent for, the Company. The use of the word “we” is ambiguous. As is clear from the correspondence emanating from Mr Maftoon, a sole trader himself, sole traders frequently use the first person (“I” or “my”) when referring to their business in dealings with other parties and also the third person (“we” or “Our”).
69. The history prior to the 15 September Estimate is relevant as confirming that at no stage was Mr Sayed negotiating with Mr Maftoon on the clear basis, made known to Mr Maftoon, that any resulting contract that he entered into would be as or on behalf of the Company. Those negotiations commenced in early 2018, well before the Company was incorporated. They continued on the same basis and Mr Sayed does not identify a time at which it was made clear to Mr Maftoon that he, Mr Sayed, was negotiating or reaching agreement as or on behalf of the Company.
70. Mr Sayed relies upon earlier contracts that he says he entered into with Mr Maftoon on behalf of companies of his. That is very unclear on the limited evidence available. He seems to say that this is so because one invoice was made out in the business name of Lebaneat. That, by itself is far from conclusive. However, even if true, on the evidence before me that goes nowhere near far enough to demonstrate that in relation to the works to the Yarm Premises it was made clear to Mr Maftoon that any contract was going to be and was entered into by the Company, acting through or by Mr Sayed, rather than by Mr Sayed personally.
71. So far as the first invoice is concerned, Mr Maftoon has explained why he made it out in the name of a company and that explanation has not been contradicted. By then the contract had already been agreed and on foot for nearly 3 months. That invoice does not therefore provide evidence that in September Mr Maftoon knew that Mr Sayed was contracting as director or agent of the Company.
72. The events of March 2019 regarding the OVA, do not, in my judgement, alter the position. The events took place nearly some 6 months into the contract. The most that might be said is that Mr Maftoon’s failure to raise a point about Mr Sayed’s manuscript additions to the 15 September Estimate is some evidence that that was what the contract had always been. However, Mr Maftoon has explained his position regarding that and it does not throw doubt upon the central point that in September

2018 it had not been, and was not made clear to him, that Mr Sayed was negotiating/contracting on behalf of the Company.

73. With regard to the dormant company accounts, these again are consistent with a situation where the Company did not enter into the contract with Mr Maftoon. However, it is clear that it was at the least expending money during the relevant period and to that extent that it was trading. I accept Mr Sayed's evidence regarding the reasons why the accounts were signed off as dormant company accounts. Whether or not the reasons are bad in law, which I consider they are as the payments out by the Company must at the least have been "significant accounting transactions" within the meaning of s1169 Companies Act 2006. Accordingly, the accounts are clearly suspect whichever version of events is accepted. I therefore do not rely upon the company accounts one way or the other.
74. As in the Hamad case, I also take into account the fact that the relevant documents not only did not contain the details of the Company but that this was in breach of what is now regulation 24 of the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015/171. However, the real significance is that again Mr Maftoon was not made aware of the Company existence and the role that Mr Sayed says he was taking as its agent/director.
75. In short, on the balance of probabilities I am satisfied that the contract in this case was between Mr Maftoon and Mr Sayed in his personal capacity.
76. I invite the parties to agree a form of order to give effect to my judgment. If there are any matters that the parties cannot agree then it may be necessary that I resolve the matter on the papers, if it is agreed that I do so in that manner, or at a further hearing. I direct that the parties contact the court to fix a hearing if agreement on the way ahead has not been reached by 12 noon on 13 July 2020.