

Legal Updates & News

Legal Updates

Pay Up or Pay Interest - Payment of Incorrect Invoices

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Overview

A recent decision by the UK Court of Appeal illustrates the dangers of refusing to pay an invoice, even if the invoice is incorrect. If a customer refuses to pay an incorrect invoice, it may be liable for statutory interest on the unpaid fees. A better approach is for the customer to pay the minimum amount that it believes is due and then raise a legitimate dispute in relation to the remainder.

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Background

The case in question is *Ruttle Plant Hire Limited v Secretary of State*. Ruttle carried out some cleansing and decontamination work for the UK Department for Environment, Food and Rural Affairs (“DEFRA”) in connection with an outbreak of classical swine fever. Ruttle issued a series of invoices to DEFRA, which incorrectly stated the fees payable by DEFRA (in some cases, the fees were too high but in other cases they were too low). The invoices included supporting documentation (e.g. records of hours worked) that DEFRA could have used to check the invoices and help calculate the correct fees. DEFRA did make some payments to Ruttle, but elected not to pay some of the incorrect invoices. The issue for the court to decide was whether statutory interest was payable under the Late Payment of Commercial Debts (Interest) Act 1998 on the unpaid fees. DEFRA’s position was, essentially, that DEFRA was not obliged to pay the fees or any interest until it had received a correct invoice.

Decision and Implications

The Court of Appeal disagreed with DEFRA and found that (1) the invoices triggered an obligation on DEFRA to pay the fees, even though the invoiced fees were calculated incorrectly, and (2) statutory interest was payable on the unpaid fees from the time they became overdue.

According to the court, where a customer is presented with an incorrect invoice, the proper course of action is for the customer to pay the minimum amount that it thinks is due and then ask the supplier to correct the invoicing error or substantiate any additional fees claimed by the supplier. In this case, if there is genuine uncertainty about the amount properly due, then even if the customer has under-paid the supplier, a court should use its discretion not to charge statutory interest on the amount of the under-payment.

There are a couple of key lessons to be learnt from this decision. Firstly, **an incorrect invoice can still trigger an obligation to pay** - the court said that an invoice is a “two-fold statement by the supplier ‘this is what I think you owe’ and ‘pay me now’”. *Getting the former wrong does not mean that nothing is*

owing.” Secondly, **it is not legitimate simply not to pay an incorrect invoice** - the court said that a supplier cannot “*pay nothing at all and expect to escape the high rates of interest imposed by the Act on what on any view is due.*”

From the customer’s perspective, there are a number of things that can be done in order to avoid the problems experienced by DEFRA in this case:

- take the court’s advice and respond to incorrect invoices by paying the undisputed amount and then querying the supplier’s calculation of the remainder;
- specify clearly in the contract when the obligation to pay will arise - the court specifically contemplated that there may have been a different result for DEFRA “*if the contract had expressly said nothing was owing unless and until a correct invoice was supplied*”; and
- agree in the contract a remedy that will apply, in place of statutory interest, in the event of any late payment. As the UK’s statutory interest rate is relatively high (8% above the Bank of England base rate), it is common for parties to agree on their own lower rate of default interest. When taking this approach, the parties should be very clear on when default interest will be payable (i.e. they should agree on whether a correct invoice will be required before interest starts to accrue).