

Submission by David Rothband

I operate as a sole trader t/a Riff Projects in the local construction industry. I have collated a few comments you may find useful relating specifically to that field. They are in no particular order and are in bullet point format;

- **PROFILE:** I am David Rothband. I have an Honours Degree in Building Technology from Manchester University; I have a certificate in 'Commercial Mediation' and am an Associate Member of The Chartered Institute of Arbitrators. I have been employed in the construction industry for thirty five years. Since 1983 I have operated mainly in Jersey, and have experience in all aspects of Construction work. This includes surveys, defect diagnosis, maintenance, refurbishment, arbitration, mediation, dispute resolution, building design and contract administration for various forms of construction.
- Many of the disputes I see or hear about during my work relate to non payment to contractors or sub contractors. They are often (but not always) a debt as opposed to a technical dispute.
- They could also be short payment or reluctance to release retention at the end of a project.
- At present the cost of legal action put many people off seeking justice.
- In 2010 I wrote to the Bailiff on this very matter and suggested raising the single claim threshold in the Petty Debts Court. Copy of letter attached.
- A previous case in which I gave evidence was simple in principle and related to the cost of work measured on a daywork basis. However I feel that measured work could be treated in much the same way.
- I have heard it said by those within the legal profession that anything less than £150K in any one claim is not worth taking to the Royal Court, hence the large void created between the two values.
- A system where a Plaintiff can issue proceedings in a simpler format as per Petty Debts Court and then some form of ADR then made mandatory in the first instance may assist matters. Legal aid could be provided with Lawyers guiding the laymen through the process.
- From my experience Mediation has its limitations and often tends to be a negotiation as 'what will you accept'?
- My suggestion is for some form of Tribunal be developed within clear guidelines where both parties present their case complete with written and oral evidence to back this up as appropriate. The issues which regularly arise within the construction

industry can be streamlined and made user friendly without the need for a long winded and over litigious process.

- There should still be a claim, defence and where relevant a **realistic** counter claim. In my experience it is the latter which often causes the greatest stumbling block. In such cases this element of the case should be assessed early on and parties be encouraged to look at the real issues for which there is sufficient evidence.
- In construction cases I would like to see 'experts' in the particular field to administer, chair or assist/act for each party. I am able to offer my services in any of these roles.
- Riff Projects has experience in such types of dispute but I have noticed increased frustration where an aggrieved party lacks the funding to seek justice.

I have read the ACCESS TO JUSTICE IN JERSEY: REVIEW and would be available should you wish to discuss any specific matters in person.

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M C StJ Birt Esq
Bailiff

13 September 2010

Bailiffs Chambers

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Dear Sir,

I wonder if you could advise me on the following matter.

Currently I operate as a sole trader in the construction and development industry acting in capacity as a Project Manager, Quantity Surveyor or Client's Rep. I have experience in all aspects of Construction work. This includes surveys, defect diagnosis, maintenance, refurbishment, arbitration, mediation, dispute resolution, building design and contract administration for various forms of construction. Over recent years I have been approached by a variety of people (clients, sub contractors and developers) asking me to assist in resolving a range of disputes. As you can appreciate there is no shortfall of disagreements in such a complex industry.

On more than one occasion I have been involved in reporting the background to a particular dispute where the sum of money involved is in the region of £20,000. This figure is not excessive within the overall scheme of say a sub contract on a medium sized project. However, the value of this claim is

double the jurisdiction of the Small Claims Court and on the last occasion I assisted a client in such a claim, the company I represented did not take the matter further due to the disproportionate cost of preparing for a Royal Court hearing.

I genuinely feel (as do several of my contacts in the industry) that should the limit of a single claim be increased to say £50,000 in the Petty Debts Court then more people would be encouraged to follow up a claim via a more informal process. I am aware that the court, on occasions, does suggest mediation as an appropriate solution. The current system unfortunately can appear to favour the Respondent when the actions of the party holding the money go unchallenged.

I am contacting you to ask who I should write to on this matter to put my thoughts on record. I would be happy to discuss with any member of your staff the nature of cases I have become involved with should this assist in any way.

Yours sincerely,

David M Rothband

cc Advocate P Mathews