

Page 99 The status of letters of intent

There has been a spate of cases concerned with the status of letter of intent. It is interesting to speculate on the possible reasons for the sudden appearance of this line of cases. One reason for this may be that, in the current uncertain economic climate, parties are more reluctant to commit themselves to a binding contract and place greater reliance on letters of intent. But the difficulty which is then generated lies in ascertaining the significance in law of the letter of intent. The cases continue to show that there is no one answer to this question and that much depends upon the wording of the particular letter of intent.

In *RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG (UK Productions)* [2008] EWHC 1087 (TCC), [2008] All ER (D) 206 (May) Christopher Clarke J held that the parties had entered into what he termed a 'letter of intent contract.' The letter of intent envisaged that the parties would enter into a formal contract within four weeks and the contract was held to have come to an end on the expiry of that period without a formal contract having been concluded. Nevertheless, the claimants continued with the work and the defendants accepted performance and paid for part of it. In such circumstances it was held that the parties had entered into a further contract. It was unrealistic to suppose that they had not intended to create legal relations and it was held that they had reached full agreement on the work to be done for the price they had already agreed.

In *Diamond Build Ltd v Clapham Park Homes Ltd* [2008] EWHC 1439 (TCC), 25 June 2008, Mr Justice Akenhead considered another case which 'illustrates the dangers posed by letters of intent which are not followed up promptly by the parties' processing of the formal contract anticipated by them at the letter of intent stage.' On the facts he held that the simple contract represented by the letter of intent had not been superseded by the formal contract which the parties had anticipated with the result that the parties' relationship continued to be governed by the letter of intent, not by the anticipated formal contract.