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In a building contract, the common law does not oblige the employer (the client) to perform his obligation until the contractor has completed his performance. The contractor must complete the works in all respects before the employer is required to pay.

Consequently, it has become the custom in a JBCC (Joint Building Contract Committee) contract that the contractor is paid at regular, monthly intervals an amount that represents the value of the work done since the previous payment. It is important to bear in mind that the right to such payment is contractual and that in the absence of such provision, the contractor has no common-law right to interim payments.

Interim payments are made on the basis of interim payment certificates (IPCs) issued monthly by the principal agent to the contractor, and they are to be based on valuations prepared not later than the specified date. The principal agent remains obliged to issue IPCs on a monthly basis until the issue of a final payment certificate. Failure to do so will result in grounds for the contractor to cancel the contract or to call up the full amount of the payment guarantee.

Accordingly, a contentious issue that arises relates to the issuing of an IPC. A prime obligation of the principal agent (that is, the agent of the employer and usually an engineer or architect) is to issue an IPC. Thus, for a valid IPC to be issued, the certificate must have been issued by the designated and defined official, namely the principal agent.

What does this entail? In *McKenzie: the Law of Building and Engineering Contracts and Arbitration*, the point is made as follows: "In general a certificate does not need to be in any special form... Certification must be by the principal agent nominated in the contract." For example, it was held in *General Iron and Hardware Co Ltd v Estate Molyneuz and Oldham* that if the architects named in the contract were Henry and Hill, a certificate signed by "Chas. Hill pro ex Henry & Hill, Architects" will not be considered to be a valid certificate. It was held further in *Lamprell v Billericay Union* that if a contract provides that a certificate should be given by two or more architects, a certificate signed by one of the architects is insufficient.

Similarly, the existence of a signature has important effects. In *Sonfred (Pty) Ltd v Papert*, it was held that: "...a person is not bound by the mere fact that his signature appears on a document of debt. The chief significance to a document of obligation is that it is evidence of the fact of consent

by the signatory, therefore the cause of action is not his signature per se, but the acceptance of liability, of which the signature of evidence."

Important consequences attach to, and flow from, a certificate properly and correctly issued. For example, the issuing of a certificate indicates when payment is due and, in some cases, the issue of a certificate is condition precedent to payment. For a certificate to be treated as a condition precedent, the contract must clearly provide for it. Moreover, the principal agent in issuing a payment certificate does so as an agent of the employer and approaches the task as an expert using his professional skill and knowledge. Should an "unauthorised" party issue IPCs during the contract and the contractor accepts this at face-value, the contractor would be hard pressed to find the employer liable for damages.

It is patent from the above that the correct issuing of a certificate by the authorised party with the relevant signature thereto has serious repercussions for a contractor. It would be prudent to seek legal advice before taking action on a disputed certificate.

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