

Between:**PROFI WELDERS s.r.o.****Plaintiff****– and –****R&R MECHANICAL LIMITED****Defendants****JUDGMENT of Mr Justice Max Barrett delivered on 29th January, 2019.**

1. Profi Welders supplies personnel for construction projects throughout Europe. R&R fabricates piping systems in Ireland. Profi provided personnel to R&R to assist in the construction/installation of piping systems needed at a power plant (the 'Project'). There is no written contract between the parties governing the personnel supply arrangement. After ascertaining the availability of personnel, R&R would simply request a named individual and confirm the hourly pay-rate due to Profi for same. Profi seeks to recover payments its claims are owing in respect of personnel provided. By counterclaim, R&R claims that (1)(i) it was an express &/o implied term of the contract with Profi, &/o (ii) Profi represented &/o warranted, &/o (iii) Profi owed R&R a duty of care, to ensure that personnel supplied were competent to do the tasks demanded, and (2) Profi was in breach of contract and/or negligent by providing what R&R claims were substandard, incompetent staff.

2. Over two days the court heard evidence from Mr M Pavlik and Ms Z Solopova (respectively a director and employee of Profi) and Messrs P Cassidy and L Daciuk (both senior employees of R&R). Arising from their evidence and such other evidence as is before the court, the following has been established:

- (1) Profi undertook and sought to ensure that all personnel supplied were technically qualified for the work demanded of them; it gave no warranty beyond that.
- (2) it has not been established that Profi supplied staff who were not technically qualified for the work demanded of them.
- (3) Profi did not undertake to complete the construction project in which R&R was engaged.
- (4) R&R was solely responsible for the adoption of work systems and quality assurance and other procedures for the said construction project.
- (5) R&R was solely responsible for managing and supervising, and did manage and supervise, the Profi personnel in Ireland.
- (6) it was R&R's responsibility to carry out and manage such skills tests as were appropriate in the context of the construction project undertaken.
- (7) though there were some concerns raised with Profi by R&R about the performance of certain Profi personnel, (a) from the commencement of the personnel supply arrangement in spring 2016 until the time when it became clear that R&R was not going to pay the still-outstanding payments, the supply arrangement generally worked well, (b) although it was open to it so to do, R&R never asked that any individuals supplied by Profi be replaced, (c) it is clear from the evidence of Ms Solopova (who attended in Ireland for a time to see what could be done to resolve such issues as had arisen) that the issues presenting as regards the quality of welding work done represented a small fraction of the welding work done and were eminently capable of timely resolution.
- (8) the termination of R&R's contract with the main contractor is a matter to which Profi is in truth a stranger; however, it appears from the documentation before the court that the termination was done not for cause but for convenience, i.e. simply because it was desired that R&R remove itself from the construction site (perhaps because of an on-site contretemps which involved the Gardaí being called after entry by non-R&R staff onto R&R's on-site premises).
- (9) Mr Pavlik's efforts to assist R&R if and when he was contacted were but the to-be-expected efforts of a competent and professional businessman engaged in the supply of personnel. His actions did not involve an assumption of any liability by Profi for the doing/completion of the construction project in which R&R was engaged; nor do they in any way affect any of the conclusions reached herein.
- (10) it does not appear that Ms Solapova's work was provided, as contended, on a complimentary basis; the repeated efforts by Mr Pavlik to agree a discounted basis for Ms Solapova's work suggests to the court that, on the balance of probabilities, her work in Ireland was chargeable to R&R's account.
- (11) the claim made out by Profi is effectively undisputed; by contrast, R&R's counterclaim is vague and unsubstantiated.

3. As a consequence of the above findings, the court concludes that Profi Welders has established the liability of R&R, as a matter of contract law, for the sums claimed in the summons of 08.02.2017; by contrast, R&R has failed to bring any aspect of its counterclaim home. The court will therefore grant the reliefs sought by Profi in its summons. All reliefs sought by R&R are respectfully refused.

4. The court notes that there was some late-discovery of documentation on both sides. Though this is to be regretted, discovery is inherently subject to human error and not every failure to make discovery necessarily involves wrongdoing; nor does the court see any wrongdoing to present here. The court notes that in reaching its conclusions it has done so by reference, *inter alia*, to all the documentation placed before it, including the belatedly discovered documentation.