

# CONSTRUCTION : BULLETIN

## The Dangers of Poor Record Keeping – Fabricate Timesheets at Your Peril!

Keeping detailed contemporaneous records of, among other things, the work carried out on site is critical for any contractor. Failure to do so can cause many problems, not least of which is the risk of not being paid. In the recent case of *J Browne Construction Company Ltd v Chapman Construction Services Ltd and Messrs Andrew and Barry Chapman*, a sub-contractor found itself in a real mess when it was discovered that time sheets had not been kept.

### Background

J Browne Construction Company Ltd (“JB”) engaged Chapman Construction Services Ltd (“CCS”) as a labour-only sub-contractor in connection with a contract JB had entered into with South East Water for cleaning and maintenance works at various reservoirs. CCS was run by Andrew Chapman. His brother, Barry Chapman, worked for JB as a Contract Manager. Barry Chapman’s responsibilities included authorising the payment of labour invoices submitted by CCS in relation to the South East Water contract.

From early 2013 until mid-2014, JB paid all of CCS’ invoices in full, as authorised by Barry Chapman and a co-signatory. In mid-2014, Barry Chapman was removed from working on the South East Water contract because of unsatisfactory performance with regard to health and safety. He was subsequently off sick following an accident. In September 2014, JB brought in a Mr Dodd to review the documentation for the CCS sub-contract.

Mr Dodd discovered that there were no timesheets relating to the CCS

invoices. He carried out an analysis of the CCS invoices by comparing them with the Principal Contractor Weekly statements (“PCWs”) CCS had submitted. The PCWs were health and safety records showing names, dates and shifts worked on site. Mr Dodd came to the conclusion that the CCS invoices had claimed substantially more than should have been paid based on the information recorded in the PCWs.

On 6 October 2014, relying on Mr Dodd’s analysis, JB issued a pay less notice to CCS which said that the sum due to CCS was nil. JB subsequently accused CCS and Andrew Chapman of fraud and overcharging.

JB brought proceedings alleging that Barry and Andrew Chapman were part of a conspiracy and fraud which involved Barry Chapman ensuring that CCS was paid for work invoiced without timesheets. The Chapman brothers were alleged to have fabricated timesheets and a letter from Barry Chapman to CCS authorising overtime. The Chapman brothers denied these allegations.

JB also alleged that CCS was in breach of the sub-contract for failing to provide timesheets with invoices, which was a condition precedent to payment, and was not entitled to overtime because this was not authorised in writing. However, JB did concede that something was payable for the work CCS had done.

### The terms of the sub-contract

Clause 5 of the sub-contract between JB and CCS provided that applications for payment must identify the names,



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dates and shifts worked by each individual. This was a condition precedent to payment. It was also a condition precedent to payment for overtime that prior written authorisation of overtime was obtained.

### Were the timesheets fabricated?

CCS argued that the timesheets, although not attached to the invoices when the invoices were submitted, were nevertheless genuine and contemporaneous documents because they had been provided to Barry Chapman to sign at various points and he had then kept hold of them.

The court noted that the timesheets did not identify anyone working on the project by name and were different from those produced by CCS in relation to other projects around the same time. There were also discrepancies between some of the timesheets and contemporaneous emails discussing the number of people working on the site.

Despite CCS' argument that they would have made a better job of the timesheets if they were fake, the court decided that the likelihood was that the timesheets had been fabricated after the dispute arose.

### Was the overtime letter fabricated?

CCS had produced a letter from Barry Chapman dated 2 July 2013 authorising overtime on a general basis. The original of the letter had apparently been lost, but two copies in different font were disclosed to the court.

The major difficulty for CCS was that Barry Chapman had destroyed his laptop prior to the trial so that the electronic version of the letter no longer existed. This cast serious doubt on CCS' evidence on this point.

The court noted that the letter purporting to authorise overtime was inconsistent with emails JB had sent to CCS some time later which indicated that there was no agreement to pay overtime. The court therefore concluded that the overtime letter was also fabricated.

### Was there a fraud or conspiracy?

Despite the findings that CCS had fabricated evidence, the court held that there was no deliberate fraud, conspiracy or deceit. The Chapman brothers were not fundamentally dishonest.

The court found that the most likely explanation for CCS' failure to produce timesheets at the time the invoices were submitted was that Barry Chapman had not insisted on the submission of timesheets because he was struggling to administer a large contract by himself and had trusted his brother to submit accurate invoices. The court noted that some of the fabricated timesheets had understated the extent of the work carried out when compared with certain contemporaneous emails. This was not consistent with dishonesty. Despite the family connection, there was no substantial evidence that Barry and Andrew Chapman believed the CCS invoices were inaccurate when they were submitted.

The fabrication of the timesheets was a *"misguided and wrongful attempt to meet allegations of fraud which they considered to be wholly unjustified... They knew they had no documents, and therefore attempted to reconstruct them to bolster what they believed to be the correct position"*.

### Was there a breach of contract?

The court found that there was a breach of contract by Barry Chapman in not requiring timesheets to be submitted and a breach of contract by CCS in not providing them.

However, JB acknowledged that some sums were due to CCS and the court accepted that most of the work invoiced by CCS was in fact carried out. When it came to the question of damages for breach of contract, there was little evidence to assess how much JB had overpaid CCS. The court was very critical of Mr Dodd's *"highly inaccurate"* analysis, much of which JB had sought to distance itself from at trial. The analysis was flawed and certainly did not establish overcharging to the extent initially contended for by Mr Dodd. There was little other evidence available. The court noted

that there was a lack of accuracy in all documentation related to the contract and described document control for the project as *"dismal"*.

The court decided that CCS' invoices were likely to have been inaccurate by a margin of 15% and this was the amount by which CCS had been overpaid by JB. CCS was ordered to repay this amount.

### Analysis

This case demonstrates one of the many things that can go wrong when contracting parties fail to keep proper records of events occurring on site. This dispute would probably never have arisen if CCS had kept time sheets in the first place and submitted them with invoices as required. As this case shows, a close relationship between individuals involved with a project is not an excuse to fail to keep proper records. Indeed, it will probably raise suspicions about why records have not been kept.

Whilst CCS might be perceived to have "gotten away with" fabricating timesheets in this case, the fabrication of records is certainly not a sensible course of action. CCS may have had to pay substantially greater damages to JB if the court had perceived CCS to have been acting dishonestly or the timesheets had claimed significantly more than was actually due.

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