**Letter of Intent – What Every Contractor Should Know...**

It is not unusual in construction for works to commence on site prior to the contract being finalised and agreed by both parties. A constrction contract can often be lengthy and require attention and negotiation before all parties can agree terms, that said there has to be some basic terms set to provide sufficient protection against starting works on site.

The use of a Letter of Intent (LOI) is common practice for an employer and contractor to enter into. Essentially an LOI is a document expressing an intention to enter into a contract at a future date but creates no contractual relationship until that future contract has been entered into, an LOI is not an 'agreement to agree'.

LOIs become problematic if negotiations take longer than expected, or, are never agreed at all! This leaves all parties involved in a position of uncertainty as to where they stand.

There can be numerous reasons for this, including failing to find a solution to an impasse to situations on site.


In a recent case between Anchor v Midas (which was heard in 2019 before Mr Justice Waksman in the High Courts TCC), prior to commencing a project whereby Anchor appointed Midas in the design and construction of project in Hampshire, as the parties were unable to agree terms, a series of LOIs were implemented with the intention of a mutually agreed JCT D&B Contract being entered into at some point during the works.

An LOI was agreed on 10th September 2013, this being the first and the last which expired on 30th June 2014. Midas signed a copy of the Building Contract on 21st July 2014, Anchor did not.

It was noticed that the register expressed a certain cost risk to Anchor of £155,000 and it therefore suited Anchor to argue that by not signing it they had not entered into such a contract, and therefore a contract had not been formed.

The project however suffered a setback and as such, under a binding contract would mean that Midas would now be liable for and would be required to pay Anchor significant delay liabilities. It now suited Midas to change their tack and contend that by Anchor not signing the contract, the contract was not legally binding and in addition Midas could claim for remuneration of the works it had already undertaken on a quantum meruit basis: to this Anchor then decided the contract WAS valid.

One of the five preliminary issues was whether that despite only Midas signing the contract, had they actually entered into a contractual relationship?


This was not the decision of Waksman J who held:

"I reject the contention that the parties intended to be legally bound only when both signed the contract. I find that they intended to be so bound as at 21st July 2014 when Midas signed"

The court held in Anchor v Midas that the essential elements of the contract were agreed:

- The risk register did not form part of the contract, as previous evidence showed the parties' agreement of how risk was to be apportioned.
- Despite Anchor not signing the contract, and because of Anchors conduct, and that of Midas who carried out further works, this was enough for the court to hold that a contractual relationship had been established.

It is still a common occurrence and LOIs will continue to remain a useful tool for parties in construction projects prior to works commencing without yet having agreed express terms of contract. The judgment between Anchor v Midas provides a positive declaration to those in favour of such agreements. It remains prudent though to express terms and agree as early as possible to avoid uncertainty throughout and after Practical Completion.