

Anthony Speaight KC acted for the successful party in a case which demonstrates the possibilities of pleading a claim in estoppels

In *Mears Ltd v Shoreline Housing Partnership Ltd* a housing association invited tenders for a contract whose draft documents provide for it to be operated and paid on what might for simplicity be called basis A, a basis involved cost/value reconciliations every 6 months. The Claimant was the successful tenderer.

Then there was a meeting at which the parties orally agree that the contract would, in fact, be operated and paid on what might, also for simplicity, be called basis B. The housing association indicated that the draft contract documents would not need to be amended.

Then work started, and the job was operated, invoiced and paid on basis B.

The formal contract was not executed until about 6 months later, the contract documents still setting out basis A.

At about that time new managers arrived at the housing association. Comparing the contract documents with what had been happening they decided that not only was the contractor invoicing on the wrong basis, but that the result was a substantial overpayment. Operating the cost/value reconciliations they deducted £300,000 from the contractor's account.

The contractor now found itself in a difficulty. The terms of the formal contract were retrospective to the start of work, so it could not say that the formal contract applied only from the date of its execution onwards. There was a provision that variations had to be in writing, so it could not say that the oral conversation had varied the contract. And there was an entire agreement clause, so it could not assert that the conversation had formed a collateral contract.

Eventually the contractor relied principally on estoppel by convention. The employer responded that this would be to use the estoppel as a sword, rather than merely a shield. Whilst it was true that it was the contractor who was bringing the claim and seeking £300,000 from the court, Akenhead J in the TCC held that properly analysed the contractor could say that it was using the estoppel only as a shield to defeat the employer's deduction.

The contractor also pleaded a claim in estoppel by representation. The employer retorted that the asserted representation was one of law, and not of fact. However, the judge held in an interesting part of the judgment that a representation of fact or opinion could found an effective representation.

Anthony Speaight KC acted for the Claimant. Read the full judgment [here](#).