Neutral Citation Number: [2022] EWCA Civ 183

Case No: A1/2021/1256

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT
MR ROGER TER HAAR QC (Sitting as Deputy High Court Judge)
[2020] EWHC 3393 (TCC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/02/2022

Before :

LADY JUSTICE KING
LORD JUSTICE COULSON
and
LORD JUSTICE SNOWDON

- -

Between :

Mashael Alebrahim	**Appellant**
- and -	
BM Design London Limited	**Respondent**

- -
- -

Simon Butler (instructed by **TKD Solicitors**) for the **Appellant**
Binkie Moorhead, a director of the Respondent for the **Respondent**

Hearing Date : 1 February 2022

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Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and released to BAILII and the National Archives. The date and time for hand-down is deemed to be 10.30am on 17 February 2022

LORD JUSTICE COULSON :

1. Introduction

1. The appellant, "MA", is the owner of a substantial flat in a late Victorian mansion block, Harley House, on Marylebone Road in London ("the property"). The respondent company is in business as an interior designer. It is controlled and directed by Ms Binkie Moorhead ("BM"). Pursuant to a written contract dating 7 April 2017, MA engaged the respondent to act as interior designer for the extensive interior refurbishment of the property. This primarily involved sourcing and arranging the supply of furniture and fittings (sometimes referred to as "FF&E" in the documents).

2. In time, the parties fell out. Having been paid a total of £774,561.92 in respect of the interior design works at the property, the respondent faced claims from MA, primarily in respect of alleged overspends and delay, in the sum £810,650.39. The pleadings were confused and confusing and some of the real issues between the parties did not come to light until the trial.

3. That trial was heard by Mr Roger Ter Haar QC, sitting as a deputy high court judge ("the judge"), for four days in November 2020. It was in many respects a classic building case, with everything in issue, points of detail lurking everywhere, and no short cuts. Notwithstanding the practical difficulties posed by the inadequate pleadings and the unhelpful nature of much of the evidence (to which he refers in the early part of his judgment), the judge metaphorically rolled up his sleeves and addressed every dispute with meticulous care. His detailed judgment was produced just three weeks later, on 11 December 2020 ([2020] EWHC 3393 (TCC)).

4. One of many disputes between the parties concerned the proper construction of the contract. This issue, which was not properly identified until the trial was underway, concerned the FFE element of the contract only. It centred on the meaning of the term "the total cost of works" in the contract, and how that expression was to be interpreted in the light of the agreed contractual process, whereby the respondent provided MA with estimates for each element of the work and, once those estimates had been approved and corresponding sums paid by MA in accordance with the respondent's invoices, the respondent would place orders and procure the relevant items of furniture and fittings.

5. The argument advanced on behalf of MA at the appeal hearing eventually came down to this: that the reference to "the total cost of works" was a reference to the total cost of the works *to the respondent*, and that therefore it was anticipated that, to the extent that the respondent obtained (lower) trade prices for furniture and fittings, those lower prices would be passed on to MA as a part of "the total cost of works". In contrast, the respondent said that it was a reference to the total cost of works *to MA*, by reference to the weekly estimates which the respondent prepared and which MA accepted and paid. BM said in her evidence to the judge that there was never any discussion about, let alone contract terms that referred to, trade prices, or the passing on of any trade discounts by the respondent to MA.

6. The judge concluded that the respondent's interpretation of the contract was to be preferred. However, he calculated an alternative set of figures that would apply if he was wrong about the construction of the contract, an exercise which involved a good

deal of additional work on his part. His alternative calculation meant that, if he was wrong on construction, MA was entitled to recover from the respondent £99,582.18 by way of over-payment.

7. As set out in his judgment, for a variety of reasons, the judge dismissed all MA's claims against the respondent. MA sought permission to appeal on all issues. The judge gave permission on the contract construction point, but refused permission on everything else. When MA renewed the application for permission to appeal to this court, I refused the application in respect of all other grounds, essentially for the same reasons as the judge. That means that it is only the contract construction point which remains live on this appeal.

8. I propose to deal with that issue in this way. In Section 2, I set out the relevant parts of the contract. In Section 3, I set out the relevant parts of the judge's judgment, together with one passage from his second judgment on consequential matters. In Section 4, I deal very briefly with the law, there being no discernible issues of principle between the parties. Thereafter, in Section 5, I set out my views on the issue under appeal. I am grateful to Mr Butler for the assistance which he has properly rendered throughout to BM, a litigant in person.

2. The Contract

9. The written contract was dated 7 April 2020.

10. The contract started with a page headed "Introduction" which included the following provisions:

> "The proposed presentation date will be the week commencing 1st May 2017. When the client approves the design and initiates the ordering process, 35% of their project Value is due, with the remainder payable in instalments throughout the duration of the project.
>
> The week before installation, the outstanding balance from the clients approved project value (typically 5%) and any authorised modifications or approved services are due. BM Design will notify the client of the amount in advance, so the client can submit payment at least one week prior to installation day. To complete the look of the interiors, accessories and artwork may be added to the scheme on installation day. The client is not obligated to purchase the stock accessories. The client has five days to review these items and notify BM Design of any accessories they wish to purchase. Payment for items is due within seven days of the installation."

11. Clause 1 provided:

> "**Outline of interior service offered**
>
> 1.1 Establishing client objectives
>
> 1.2 Analysing floor plan
>
> 1.3 Detailing internal layout
>
> 1.4 Specifying and Procuring fittings & furnishings
>
> 1.5 Overall Project Management

1.6 Implementation of Interior Design Scheme

1.7 Snagging of Interior Design Works

1.8 Travel Arrangements

1.9 Estimated Costs & Interior Design Fee

1.10 Increase to Scope of Works

1.11 Delivery Dates

1.12 Payment Schedule."

12. Clause 5 provided:

> "**Specifying Fittings and furnishings**
>
> To create your lifestyle objectives, a selection of furniture, fittings, fabrics and accessories will be sourced for client approval.
>
> BM DESIGN Limited will source, design, commission and procure all aspects of the interior scheme including window treatments, bespoke furniture and joinery where necessary. Accessories and artwork may also be commissioned and procured where required.
>
> Specifications will be drawn up for all paints colours, timber stains, ironmongery and electrical where appropriate.
>
> On receipt of the signed off scheme and deposit funds, BM DESIGN Limited will place orders on behalf of the client."

13. Clause 10 is critical to the narrow issue on appeal. It provided:

> "**Estimated Costs & Interior Design Fee**
>
> The Interior Design Fee is based on 20% of the total cost of works and is clearly set out in the payment plan below. We will propose detailed guideline estimates of costs as the scheme evolves.
>
> For your information, this fee covers all procurement, in connection with the interior scheme.
>
> Any items sourced separately by parties outside of BM DESIGN Ltd and not purchased through BM DESIGN Ltd, will not form part of our 'Cost of Interior Design Works' and therefore will not [be] subject to our 20% Design Fee.
>
> Any items sourced by BM DESIGN Limited but purchased separately by parties outside of BM DESIGN Limited will be subject to our fee.
>
> Please note that the Interior Design Fee **DOES** cover the following areas:
>
> - Furniture (sofas, tables, chairs, freestanding cabinets, decorative lighting, cushions)
> - Window Treatments (curtains, blinds, shutters etc.)
> - Rugs
> - Artwork sourcing
>
> Please note that the Interior Design Fee **DOES NOT** cover the following areas:

- Detailed drawings, design concepts, installation, sourcing, schedules and project management, which are chargeable hourly.

Please refer to "Our Services" document for additional services offered.

We will propose detailed guideline estimates of costs as the scheme evolves. We assure you that BM DESIGN Limited keeps a strong focus on budgetary control. For your information, our fees cover all meetings, design time, planning, estimating and procuring and overall installation in connection with the interior scheme…"

14. Clause 12 provided:

"**Increase to Scope of Works**

In the event that after submission and acceptance of the estimate changes are made to the Scope of Works or any circumstances arise or events occur which could not reasonably have been foreseen at the date of the estimate, any additional sums reasonably and fairly incurred will be charged to the Client."

15. The Schedule of Payments provided:

	INTERIOR DESIGN FIXED FEE	COST OF INTERIOR DESIGN	STATUS OF PROJECT
Apr 2017	50% Deposit of Fixed Fee		Signing of Contract
May 2017	50% Balance of Fixed Fee	35% Deposit for Furniture	Interior Design development/Orders Placed
May 2017		30% Interim Payment	Management of Orders
Jun 2017		30% Interim Payment	Order Management
July/Aug 2017		5% Balance on completion	Installation of Interior Design

16. The contract also included a separate set of terms, headed "Interior Design Terms & Conditions" ("the T&C").

17. Clause 3.0 of the T&C provided:

"**ESTIMATE OF COSTS**

Whilst producing the scheme for the Interior Design Works, BM DESIGN Limited will produce an estimate of costs with instalment payment dates for the supply and implementation of the Scope of Works, which will be prepared in accordance with the Clients budgetary requirements.

Prices quoted in the estimate and any subsequent revised estimates are subject to finalised detail. BM DESIGN Limited reserved the right to alter all prices quoted if suppliers alter those quoted to them. Any fluctuation in the prices quoted above £500 will be confirmed in writing to the client for their approval.

> The estimate of costs is subject to variation in accordance with clause 6 below. On estimates of a value less than £20,000 + VAT, BM DESIGN Limited reserves the right to invoice 100% on acceptance of estimate."

18. Clause 6.0 of the T&C provided:

> "**ADDITIONALS TO SCOPE OF WORKS**
>
> **Increase to Scope of Works**. In the event that after submission and acceptance of the estimate changes are made to the Scope of Works or any circumstances arise or events occur which could not reasonably have been foreseen at the date of the estimate, any additional sums reasonably and fairly incurred will be charged to the Client.
>
> Should the client request that BM DESIGN Ltd purchase an item on their behalf which has not been outlined or scheduled for in the Scope of Works, BM DESIGN Ltd will request that the client confirm this in writing. BMD will detail the price of the item as well as stating that the client will be required to pay for the item in full on the next invoice issued to them by BM DESIGN Ltd.
>
> **Additional work.** If additional work is requested by the Client which is not included within the original Scope of Works and which cannot be accommodated within the original time scale the additional works will be subject to a separate proposal for agreement and implementation together with new payment terms and conditions."

3. The Judge's Judgment

19. It is only necessary to refer to a short section of the main judgment for the purposes of this appeal. The judge identified the issue of construction in the following terms:

> "58. As the arguments and evidence emerged before me during the trial, it became apparent that there is a central issue between the parties as to whether, as the Claimant contends, the Defendant was obliged to charge for all items procured by it at cost, to which the Defendant would be entitled to add its 20% fee.
>
> 59. It was BM's submission and evidence upon behalf of her company that her task was to prepare estimates for approval by MA. Her belief was that in preparing the estimates she was not bound to put forward estimates based upon the cost to the Defendant of the items (with the fee on top) but rather that the Defendant was entitled to put forward an estimate based upon the retail price of the items. It was then for MA to accept (approve) or reject such estimates. If accepted, the estimates became binding."

20. The judge set out some of the features of the contract which he said might indicate that the estimates to be put forward by the respondent were to be based on cost: see [62]. He set out some of the opposing arguments at [63]. His conclusions were as follows:

> "64. I do not find this an easy issue. In my view the Defendant's construction of the contract is to be preferred since it fits most closely with the machinery of the contract. On this basis, the Defendant would propose a budget for acceptance by its client. If this was accepted by the client, then it became binding as between them subject to the provisions in the contract permitting departure. If the client accepted the design concept, but disliked the price, then Clause 10 contained an option whereby the client could purchase the items directly from the supplier identified by the Defendant: see the provision *"any items sourced by BM DESIGN Limited but purchased separately by parties outside of BM DESIGN Limited will be subject to our fee"* . The reference to "sourced" must refer to a supplier of a particular item identified by the Defendant. If the client liked the design cost but did not wish to purchase the items through the Defendant or from the Defendant's sources, then Clause 10 provided that the 20% design fee was not payable.
>
> 65. For these reasons, I accept the Defendant's case on this important issue. However, I would emphasise that the contractual scheme was for the estimate to be accepted by the client before it became binding. Of course there could be details to be worked out, but the main substance of the estimate had to have been accepted for it to be binding. The consequence of this is that if the Defendant started procurement or performing any other services without an accepted estimate it did so at risk, and, in my judgment, would be entitled only to payment upon a quantum meruit basis if agreement was not reached later."

21. Also of relevance is the judgment that the judge handed down when dealing with the applications for permission to appeal and costs. That can be found at [2021] EWHC 43 (TCC). As to permission to appeal, the judge concluded that, because he had himself not found the issue easy, he was satisfied that it was arguable that his construction of the contract was wrong. He went on to make one correction to what he had said at [59] of the first judgment, but also to make a further point which was plainly important to the contract construction issue. He said:

> "5. However, I would comment on part of the argument put forward by Mr Butler in support of his application. Mr Butler drew attention to part of what I said in paragraph 59 *"[Ms Moorhead's] belief was that …. the Defendant was entitled to put forward an estimate based upon the retail price of the items."*
>
> 6. Mr Butler submitted that Ms Moorhead did not suggest that she applied the retail price, but rather applied an uplift to the cost to the Defendant to generate a profit.
>
> 7. I accept that Ms Moorhead did not formulate her position quite as I expressed it, but what I put in paragraph 59 appeared to me then, and still appears to me now, to be an accurate way of summarising what she was putting forward. However this is

> irrelevant: the construction adopted by me as set out at paragraphs 63 to 65 does not depend upon the estimate put forward by the Defendant being a retail price. ***On my construction of the contract, what is necessary is an estimate accepted by the client. How that estimate is calculated is irrelevant.*** By contrast, on the construction set out in paragraph 62 the way that the estimate is calculated is a necessary element of the construction of the contract."

The emphasis is mine.

4. The Law

22. It was agreed that there was no particular principle of contract construction which arose in this case. Although the bundle of authorities prepared by Mr Butler included such well-known earlier authorities as *Investors Compensation Scheme Limited v West Bromwich Building Society (No 1)* [1998] 1WLR 896 and *Chartbrook Limited v Persimmon Homes Limited* [2009] UK HL38; [2009] AC1101, those authorities were considered and addressed in the three recent Supreme Court case to which I refer below. In my view, the applicable principles of contract construction must be regarded as having been comprehensively set out in those three cases, such that citation of earlier authority is generally unnecessary. The three cases are, of course, *Rainy Sky SA v Kookmin Bank* [2001] UK SC 50 AT [14]-[30]*; Arnold v Briton* [2015] UKSC 36 at [14]-[22]; and *Woods v Capita Insurance Services Limited* [2017] UKSC 24 at [8]-[15]. The principles are well-known: that the contract must be construed against the surrounding circumstances, in order to ascertain what a reasonable person would have understood the parties to have meant; that this should be done primarily by reference to the language that the parties have used; and that it is only if the meaning of the words used is uncertain or ambiguous that the court needs to have regard to other matters, such as commercial common sense, on the one hand, or excessive literalism, on the other.

5. The Proper Construction of the Contract

23. The starting point must be the overall way in which the contract was intended to work: what the judge called at [64] "the machinery of the contract". There were a large number of items of furniture, fittings and the like to be selected, purchased and installed. There was a relatively tight timetable, as the Introduction to the Contract (paragraph 10 above) made clear. So every week, the respondent would provide MA with an itemised estimate. We were shown an example, dated 15 September 2017, which ran to 24 pages. It was agreed that this was typical of the estimates which the respondent supplied each week.

24. The weekly estimate was broken down on a room-by-room basis. It identified individual items such as wallpaper, window treatment, fittings (in particular, lighting), furniture and accessories such as cushions. In relation to each fitting and item of furniture, there was a photograph of the proposed item. There was also a specific figure for each item: for example, £2,280 for one upholstered Ottoman in the entrance hallway; £1,652.96 for one hanging pendant light in the powder room. In this way, there were individual figures for every item in the estimate; not just a figure for each cushion, but separate figures for the fabric and the trim for each cushion as well. These figures

were presented to MA on the basis that, if MA agreed the figure for a particular item, that became the amount that MA would pay for that fitting or that item of furniture.

25. Once MA had been through the weekly estimate, and was prepared to agree to the figures it contained, the respondent would invoice MA with the relevant percentage of the total cost, together with the 20% design fee. The invoices which we were shown were in accordance with the Schedule of Payments (paragraph 15 above) because they showed, for example, the 50% deposits to be paid on order of the furniture and fittings, and the further payments required on delivery. The 20% design fee was then applied to the invoiced cost figure. In other words, the respondent's invoices operated expressly on the basis that the figures in the weekly estimate, which had been agreed by MA, were a part of the "total cost of works", to which the 20% design fee was then added. On payment of the invoice, the respondent would place the relevant orders with the suppliers for the furniture and fittings.

26. It was because of this process, and in particular the significance of the weekly estimates, their acceptance and the payment of the related invoices by MA, that the judge said that "what is necessary is an estimate accepted by the client". Once that estimate was agreed, it was part of the total cost of the works. That also explains why the judge observed that "how that estimate is calculated is irrelevant".

27. In my view, the judge was right to emphasise the importance of the weekly estimates (and MA's agreement to them) when construing the contract. The clauses of the contract, the Schedule of Payments, and the T&C, all explained and confirmed the process to which I have referred. Thus, Clause 10 itself (paragraph 13 above) was headed "Estimated Costs", and the first paragraph under that heading, having referred to the design fee as being 20% of the total cost of works, immediately went on to refer to "the weekly guideline estimate of costs" (i.e. the weekly estimates), and explained how all the payments to the respondent would be based upon them. That was also consistent with Clause 5 (paragraph 12 above), which emphasised the necessity of a "signed off scheme", and stated that orders would not be placed until the relevant deposits had been paid by MA to the respondent.

28. The Schedule of Payments (paragraph 15 above) confirmed that the payments to the respondent, their timing and their percentage of the whole, would be based on the amounts in the weekly estimates. Still further, the heading "Cost of the Interior Design" in that Schedule was an express reference to the applicable percentage of the cost set out in those weekly estimates. These provisions were also consistent with the T&C. Both Clauses 3 and 6 of the T&C (paragraphs 17 and 18 above) emphasise the importance of the figures in the weekly estimates, although they allowed the respondent to claim additional sums in certain defined circumstances.

29. It is also important to emphasise that MA was not obliged to accept each or any figure in the estimates. Clause 10 expressly provided that, if MA liked the particular fitting or item of furniture, but thought that the quoted figure in the weekly estimate was too high, she could make her own enquiries and endeavour to obtain it more cheaply elsewhere. In those circumstances, the respondent would get the 20% Design Fee (because the respondent had identified the relevant fitting or item of furniture in the first place), but not anything more. And if MA chose a completely different fitting or item of furniture then there was no fee of any kind due to the respondent, again as Clause 10 stated

expressly. The contract was not unfair; neither did it force MA to make choices that she did not want to make.

30. In this way, I consider that, on its face, the written contract reflected exactly the process adopted by the parties during its operation, and that the judge was right to conclude that the respondent's construction of the contract fitted most closely with its machinery. What, if anything, can be said to counter that interpretation?

31. Mr Butler's primary submission was that the reference to the "cost of works" in Clause 10 must be a reference to what he called 'actual cost'. He made that submission a number of times. But so it was: on its face, it was a reference to the actual cost which MA would incur if she agreed the relevant estimate for that fitting or item of furniture, and paid the relevant part of the weekly invoice. Thus the argument that it was a reference to actual cost did not help MA on the construction issue; on analysis, it was against her.

32. As my Lord, Lord Justice Snowden, observed during argument, the more relevant question may be: the cost *to whom*? Mr Butler was therefore obliged to suggest that the reference to "the total cost of works" was somehow a reference to the total cost to the respondent. In this way, he said, it was intended that, if the respondent obtained a trade discount from a particular supplier of furniture or fittings, that trade discount must be passed on by the respondent to MA in the relevant weekly estimate. On his analysis, the reference to "cost" was a reference to a figure quoted by the supplier to the respondent, without any mark-up of any kind.

33. I accept that, certainly in some forms of building contracts, references to cost will be to the cost incurred by the contractor undertaking the work: see *Keating on Construction Contracts*, 11th Edition, paragraph 4-029. That can give rise to separate disputes about whether or not the promise was to pay the actual costs, however unreasonable, or however they might have been incurred. But, in my view, an assumption that the respondent here was the equivalent to a building contractor, and that this was some form of cost-plus construction contract, would be contrary to the terms of the contract itself, and give rise to a raft of other difficulties and inconsistencies.

34. First, it would involve rewriting the contract, at least to the extent of adding the words "to the respondent" after the reference to "total cost". That would have been the way to indicate at the outset that "the cost" was intended to be a reference to the (notional)[1] cost to the respondent of placing the various orders, and thus at least the start of a process by which the trade discount obtained by the respondent might be passed on to MA. Adding those words, however, would be contrary to the general principles of construction summarised at paragraph 22 above; save in exceptional circumstances, the court should never add words to the contract so as to construe what is already there.

35. Secondly, that would not be the end of the necessary rewriting. Under the terms of the contract, the respondent had been careful not to incur any actual cost at all. The respondent was procuring furniture and fittings, but the cost was being incurred and paid by MA on a weekly basis. The contract was clear that any sum due to a supplier was not paid out by the respondent until it had first been paid to the respondent by MA. So there was never any actual cost to the respondent. At most, it might be described as

[1] As explained in the next paragraph.

the notional cost to the respondent in consequence of the placing of orders with its suppliers. So if "the total cost of works" was intended to be a reference to the notional cost of those works to the respondent, that would have had to have been spelt out in the contract too, together with an explanation of how that notional cost was to be calculated. Of course, none of that was there.

36. Thirdly, as Mr Butler made plain, this claim was based upon MA being entitled to take advantage of trade discounts and the like received by the respondent from its suppliers. It is an unpromising start to such an argument that there was no mention in the contract of any such entitlement, or a mechanism by which that entitlement would be ascertained. The contract says nothing about how the respondent's estimates were to be broken down or calculated, much less anything about the passing on of trade discounts – if any - from the respondent to MA. It would need clear words to require the respondent to provide a breakdown of each figure in the estimate so that, instead of simply identifying, say, £2,000 for a sofa, the estimate made clear precisely how the £2,000 was arrived at. For understandable commercial reasons, revealing the size or nature of trade discounts with its suppliers would not be something that the respondent would want to do, unless the contract expressly required it. This contract does not.

37. Putting the same point another way, there was nothing in the contract which suggested that the respondent would only include in the weekly estimates to MA the trade price offered to the respondent, without any adjustment or mark-up of any kind. That was the essence of the argument put forward by Mr Butler on the appeal, but there is no part of the contract which supports such a contention.

38. Fourthly, it seems to me that this interpretation would wholly undermine the agreed process which I have set out in some detail above. Estimates for individual items were prepared by the respondent, offered to and agreed by MA on a weekly basis, and the respondent then acted on her agreement by placing the relevant orders. It would be quite contrary to that process if, weeks or months later, MA could turn round and complain that the figure to which she had previously agreed was not legitimately part of the "cost" because the relevant trade discount, or whatever it might be, had not been passed on to her. That would also be contrary to Clause 5 and its emphasis on a "signed off scheme".

39. Finally, I repeat what I said at paragraph 29, that MA did not need to be supplied with details of the trade prices or the quotation from the supplier to the respondent to decide whether or not to accept any estimate. MA knew precisely what she was going to have to pay for any given item: she knew what it would cost her if she agreed to the estimate. If she thought that the figure was too much, or that the item could be sourced more cheaply elsewhere, she was under no obligation to agree that part of the estimate: Clause 10 said that expressly. She had all the information she needed to make a complete choice. She did not need details of trade prices and the like.

40. For those reasons, therefore, I have concluded that the judge was right to say that, on the particular terms of this contract, and the way in which it operated, the respondent was entitled to the sums it invoiced to MA. It may be that MA wrongly assumed that the weekly estimates from the respondent would be based on trade prices without a mark-up, and it appears that, without such an entitlement, MA now believes she made a bad bargain with the respondent. But that is because she made an assumption which was not founded upon (and was, on analysis, contrary to) the terms of the contract itself.

41. I should, however, sound this warning. Although I have concluded that the judge was right in his construction of the terms of this contract, it is not difficult to see how the misapprehension on MA's part might have arisen. Although the respondent did not at any stage conceal anything, I would accept the suggestion that this aspect of the contract may not have been as immediately transparent as it should have been. If interior designers are providing estimates of the cost of furniture and fittings to clients, they would be well-advised, either to say in terms that the individual cost figure provided will not be broken down further (so the client knows that no further information will be given) or, if they are happy to provide further information, to show how their estimate is made up.

42. However, for the reasons that I have given, if my Lady and my Lord agree, I would dismiss this appeal.

LORD JUSTICE SNOWDEN

43. I agree.

LADY JUSTICE KING

44. I also agree.