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Why always me? The Mario Balotelli approach to Applications for Payment

Finally Mario looks to have left the Premier League after what can only be described as a disappointing year at Liverpool. There are lots of different stories in the press about where it all went wrong for him (including skipping training to get the new iPhone 6) but the facts are much more straightforward: he didn't do what he agreed to do under the terms of his contract.

When Liverpool signed Balotelli this time last year, his contract allegedly contained good behaviour and performance related payment conditions. If Mario managed to turn up for training every day, play every week and not have any firework displays in his bathroom, he would receive a reported £2m per year in addition to his basic salary.

Over his three year contract, that's six million pounds for sticking to a few basic rules! If you're feeling a little envious of Super Mario, don't worry, he's unlikely to get any of his £6m (just a meagre £90,000 a week basic salary) because he didn't manage to stick to any of the conditions!

In between checking the news every day to see if Liverpool had managed offload Balotelli and his £90k per week wage burden, I couldn't help but be distracted by articles in the construction press about payment applications, payment notices and payment related disputes.

After the changes to the Construction Act came in to force in 2011, the floodgates seemed to open last year with the case of ISG Construction Ltd v Seevic College, where Seevic's failure to issue a Payment Notice in accordance with the terms of the contract meant that they had to pay £1.1m to ISG rather than the £300k they considered due under the contract. Recently, various payment related disputes have caught the eye, including:

- Caledonian Modular Ltd v Mar City Developments Ltd. The court granted declaratory relief and refused to enforce an adjudicators' decision that a payment of over £1.5m was due to the contractor as a result of the employer's failure to issue a pay less notice. In simple terms, the Contractor's application for payment was submitted outside of the payment process set out in the contract and was not a valid interim application for payment.



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- Leeds City Council v Waco. This case raised various points about what constitutes a valid payment notice and the implications of working outside of the terms set out in the contract. The parties established a course of conduct for payment applications prior to practical completion, where payment applications were often paid despite being submitted outside of the terms of the contract. However, no such agreement could be implied after practical completion and the application in question – which was issued six days prior to the relevant date - was not considered valid by the court.
- Henia Investments v Beck Interiors. In this case, neither party was particularly timeous in their management of the payment process. Beck issued their application for payment 6 days late; Henia were a little closer with their certificate being late by “3 minutes in the middle of the night”. However, Henia also issued what the judge considered to be a valid pay less notice. In contrast, Beck’s application for payment was judged to be invalid due to the late submission.

All of these cases have one thing in common – Mario Balotelli. If you don’t stick to the simple conditions that you agree to when you enter in a contract, you won’t get what you may otherwise have been due.

Some commentators have said that the court’s tougher stance on payment is a sign that there are “no easy wins”; that may be true in the case of a complicated dispute, but there is definitely an easy win before it gets to that stage - do what you have signed up to do under the terms of the contract!

Don’t smoke, don’t go to nightclubs, put a bit of effort in and wait for the £6m to roll in. Or in the real world, submit your application for payment on time in accordance with the contract, follow the rules set out in the contract for assessing the amount due and don’t jeopardise your chances of getting what you may otherwise be due by operating outside of the rules.

As Balotelli heads back to Italy, there are no concerns from AC Milan as to whether or not he’ll turn over a new leaf and behave himself; after all, he’s just agreed to a new contract which includes good behaviour clauses, so why wouldn’t he!

In the same way, many contractors dismiss such simple advice as ‘comply with the terms of the contract’. After all, why wouldn’t you? In fairness, sometimes the payment process isn’t quite as easy as not smoking in the training ground. The various dates and notices required can sometimes be quite difficult to understand.

Give yourself every chance of getting what you are due by getting it right from the outset. Map out the payment process, agree a payment schedule with the other party, decide on an acceptable format



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for interim applications for payment and be clear on the rules. Most importantly, stick to them - you might not be as lucky as Mario if it all goes wrong!

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