

Incorrect invoices - the consequences of failing to name your price

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Rolls Royce v Goodrich decision

1. In supplier contracts there is often a pricing framework agreed by both parties. A dispute can arise if the supplier invoices for an incorrect, lower figure only to then seek the balance which would have otherwise been owed under the original agreement.
2. The High Court considered whether the original agreement or the incorrect invoice takes primacy in *Rolls-Royce Holdings Plc v Goodrich Corporation* [2023] EWHC 1637 (Comm) (3 July 2023).

Analysis

3. **The Facts.** Goodrich Corporation (“**Goodrich**”) were at all material times a supplier of aeroplane parts to Rolls-Royce Holdings (“**Rolls Royce**”) along with other services.
4. The Parties had an established agreement in place including a pricing structure whereby Rolls Royce would submit orders for specific items detailing the items requested, and the price for those goods. Goodrich was then required to invoice for the goods and services supplied.
5. The invoicing clause required Goodrich to post invoices to Rolls Royce, following which “*Providing the invoice is accurate, [Rolls Royce] shall make payment...*”. A dispute arose because certain orders raised by Rolls Royce allegedly included the wrong price for the goods. Goodrich subsequently sent invoices for that same (wrong) price, which was lower than the contractual price.
6. Without raising corrected invoices, Goodrich subsequently claimed the difference between the amount paid under the invoice and the true contract price. Rolls Royce contended that the only amount due was that specified in Goodrich’s invoices.

7. The following issues arose: (i) whether any debt had accrued, to the extent that Goodrich had not submitted an invoice at the correct price; and (ii) whether the failure to submit an invoice at the correct price, provided a defence to Goodrich’s claim in debt.
8. **The Court’s Decision.** On the first question, the accrual of a debt was not dependent on an invoice being issued. Ordinarily, the obligation to pay the price is concurrent with the obligation to deliver the goods (and passing of property). Clear words would be necessary to displace that presumption. The invoicing clause was here concerned with the payment obligation, not the accrual of the debt. The fact that Goodrich’s invoices were incorrect, consequently did not mean that a debt had not accrued (at [236]-[237]).
9. The second question consequently arose. The Judge first considered the case of *Ruttle Plant Hire Limited v Secretary of State for Environment, Food & Rural Affairs* [2009] EWCA Civ 97 which examined the impact of one party invoicing the incorrect amount and whether it would take primacy over an existing price agreement.
10. The governing principle is that the effect of an incorrect invoice depends on the proper construction of the relevant payment term [240]. Nonetheless, *Ruttle* decided that an invoice is “*a two-fold statement by the supplier ‘this is what I think you owe’ and ‘pay me now’*”; and “*getting the former wrong does not mean that nothing is owing*”. It can also be relevant to consider which party was responsible for the invoicing error.
11. The Court concluded that the invoicing clause in this case confirmed that payment arose from the delivery of services and goods. Its effect was simply that an inaccurate invoice did not *create* payment obligations which were not otherwise owed. In any event, since the contract had required Rolls Royce to state the price in its initial order, which it had not



done correctly, Rolls Royce could not rely on its own breach. That conclusion would be reached as a matter of construction, to prevent Rolls Royce benefiting from its own wrong, or because Rolls Royce could not rely on any pre-condition that it had prevented from being fulfilled (at [241]-[245]).

12. The court further considered whether Rolls Royce were in breach of contract for specifying the incorrect amount on their Orders (which might give rise to a separate claim for damages, not debt). Ordinarily, merely asserting an invalid right to payment would not of itself be a breach of contract (citing *Lombard North Central Plc v European Skyjets Ltd* [2022] EWHC 728 (QB)). But the position could be different where, as here, the contract was *'one in which one party is permitted to give orders on a regular basis requiring the other party to take particular steps, and in which there is a high likelihood that any "orders" so delivered, given their peremptory character, will be complied with as a matter of course, without extensive consideration or discussion at senior management level, and where the person giving the order is in general best-placed to determine its legitimacy.'* In those circumstances, the making of an invalid demand might be a breach of contract.

13. In reaching that conclusion, the High Court reviewed a series of charterparty cases summarised in by Devlin J in *GW Grace & Co Ltd v General Steam Navigation Co Ltd* [1950] 2 KB 383:

'I think that it is necessary first to determine whether the giving of the order constitutes a breach of contract. Ex hypothesi, the order has no contractual force and is therefore of no greater validity than an order given to the ship by a stranger. The charterers in this case do not expressly warrant that their orders will be within their powers, and it might be argued that it is for the recipient to determine for himself whether they are binding on him or not.'

Impact of the Decision

14. The Court confirmed the danger of relying arbitrarily on invoices in circumstances where they did not

accord with the agreed contractual amount owed. It was confirmed that an invoice was:

'a two-fold statement by the supplier 'this is what I think you owe' and 'pay me now"', and observing "getting the former wrong does not mean that nothing is owing".

15. Practitioners advising customers will note the importance of specifying the correct amounts in Orders especially in circumstances where the details of the Order are likely to be complied with without further review. Any attempts to rely on incorrect invoices as grounds for variation or estoppel must be carefully scrutinised in view of the entire agreement between the parties.
16. Those advising suppliers may wish to consider the value of re-assessing the wording of the underlying pricing structure and agreements. It is essential to ensure that contracts comprehensively account for the possibility of incorrect orders and invoices so as to protect the supplier from mistakes.
17. Finally, all contract practitioners will note the Court's disinclination to reward one party's opportunistic reliance on an isolated contractual document which runs counter to rest of the agreement and mutual understanding between the parties.

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This article intends to state the law at the date indicated above. Although every effort is made to ensure accuracy, this article is not a substitute for legal advice.

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