

Construction Law Update

Practical Completion - A Matter of Interpretation? – Issues for Sectional Completion

In the recent case of *University of Warwick v Balfour Beatty Group Ltd* [2018] the TCC held that the proper construction of the definition of Practical Completion did *not* mean that the entire works had to be complete before a single section could be certified as complete.

Background

The University of Warwick (the “**Claimant**”) engaged Balfour Beatty Group Limited (the “**Defendant**”) as a contractor under a JCT 2011 Design and Build contract with amendments (the “**Contract**”).

The Contract related to the design and build of the National Automotive Innovation Centre, the works for which were divided into four sections.

A dispute arose between the parties and the Defendant argued that the proper construction of the Contract meant that it was not possible to achieve Practical Completion of one Section of the Works prior to completion of the whole of the Works. Due to this, they argued, the liquidated damages provisions of the contract were inoperable.

On 2 May 2018, an adjudicator accepted the Defendant’s argument and stated “*the ordinary and natural meaning of the words used in the definition of Practical Completion means that it is not possible to achieve Practical Completion of any Section in isolation from the other Sections...*” The Claimant thus commenced proceedings in the TCC.

The Definition

The definition in question stated that Practical Completion was “*a stage of completeness of the Works or a Section which allows the **Property** to be occupied or used...*” The Contract defined “Property” as “*the property comprised of the **completed Works***” and Works as “*the works briefly described in the First Recital, as more particularly shown, described or*

referred to in the Contract Documents, including any changes made to those works in accordance with this Contract.”

The Adjudicator relied on the definition of Property to conclude that, although the definition seemed “*illogical*”, “*...the words used in the definition of Practical Completion...stipulates that an individual section only achieves practical completion at a stage of completeness which allows the completed works to be occupied and used...*”. As such, he decided that Sectional Practical Completion under the Contract could not exist.

The Contract

In finding that Sectional Practical Completion could not exist in the Contract, the adjudicator seemingly ignored that elsewhere in the Contract was a clause relating to Practical Completion which detailed the mechanism for issuing a “*Practical Completion Statement*” and a “*Section Completion Statement*”. Another clause provided a mechanism which entitled the Claimant to liquidated damages in the event that the Works or a Section did not attain Practical Completion by the relevant completion date. The Contract Particulars provided different Completion Dates for each of the four sections and the Employer’s Requirements provided “*Requirements for Practical Completion of a Section*”.

The question for the TCC was therefore whether the definition should be interpreted in a way which came to an “*illogical*” conclusion, or whether other parts of the Contract should be taken into consideration.

The relevant law

The Judge in the TCC referred to Lord Neuberger’s speech in *Arnold v Britton* [2015], who stated: “*When*

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interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”.

The Decision

Having taken the above into account, together with the wording of the Contract as a whole, the Judge found that, “...the interpretation contended for on behalf of the Defendant, and accepted by the Adjudicator, does not accord with the ordinary meaning of the words used. It overly focuses on the meaning of the one word 'Property' at the expense of what the parties plainly meant...” Taking into account the wider context of the Contract, the Judge therefore held that under a proper construction, it must have been possible for Practical Completion of a Section to be possible prior to Practical Completion of the whole of the Works.

Analysis

This case highlights the problems which can arise when construction contract clauses and definitions are drafted poorly. Had the clause been interpreted in line with the Adjudicator the Claimant may have lost its right to liquidated damages entirely. Fortunately for the Claimant in this case, there was enough evidence elsewhere in the Contract for the Judge to infer the parties' true intentions when contracting. Nevertheless, parties should take extra care when incorporating definitions and ensure their intentions are clearly recorded within the Contract without ambiguity to avoid disputes of this nature arising in the first place.

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