

Take Care When Drafting Definitions of “Practical Completion”

Monday, March 25, 2019

The December 2018 decision in *University of Warwick v Balfour Beatty Group Ltd* [2018] EWHC 3230 (TCC) provides valuable insight into how courts could interpret “Practical Completion” – a central concept in most construction contracts, but one that often lacks clarity and/or definitional precision.

Background

The University of Warwick had employed Balfour Beatty Group Limited as contractor to build a new research and development facility on its campus under an amended JCT Design and Build 2011 Contract with bespoke negotiated amendments (the “**Contract**”).

The Contract provided for the “Works” to be divided into four sections, each with its own completion date and provisions for liquidated damages. The first three sections had a completion date three months before that of the fourth and final section. Practical Completion was defined in the Contract as “*a stage of completeness of the Works or a section which allows the Property to be occupied or used...*”, with Clause 2.27 of the Contract providing for the issuing of a practical completion statement “*when completion of the Works or a section*” was achieved.

The Dispute

The dispute arose from the point as to whether, on proper construction of the definition of “Practical Completion”, the entire Works were to be complete before a single section could be certified as completed. The contractor argued that the liquidated damages provision relating to each section was inoperable, as it was not possible under the Contract to achieve Practical Completion of a section prior to Practical Completion of the whole Works.

Before the claim reached the Technology and Construction Court (“**TCC**”), it was referred to an adjudication with the adjudicator agreeing with BB’s argument stating that “*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 basis of the adjudicator’s argument was that, reading the definition of Practical Completion in tandem with clause 2.27, it established that Practical Completion requires the employer to be able to occupy the works, but this should only occur if the Works are completed in their entirety. This was due to the relevant definition of “Property” (i.e. “the property comprised of the completed Works”) which implied that the whole Works, rather than any particular section, were required to be occupied for Practical Completion to be achieved.

TCC Decision

On appeal to the TCC, the judge disagreed with the adjudicator and held that, taking into consideration the wider context of the Contract, it must be possible for sectional Practical Completion to occur prior to Practical Completion of the whole Works. He said that the adjudicator’s construction of Practical Completion had focused too much on the definition given to one word, ‘Property’, and failed to have regard to what the parties meant in the wider context of the Contract, which clearly showed the intention of sectional completion before overall Practical Completion.



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This is a common sense decision, with the judge observing that there would be no purpose in treating sections separately if ...*Practical Completion of each could only be achieved when Works as a whole were complete.*"

This case illustrates the importance of clear and considered drafting, especially in relation to definitions which have the ability to make provisions in a contract difficult or impossible to operate. Care must be taken in considering the interplay between definitions, and provisions dealing with sections, completion, possession/take over and liquidated damages.

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