



LEGAL BRIEFING

Costain Civil Engineering Ltd v Haswell & Partners Ltd

[2009] QBD (TCC), Richard Fernyhough QC

The Facts

Costain had been engaged to design and construct a water treatment plant. They had employed Haswell to carry out the design work, including the foundations. Three different designs were proposed; piling, vibro-compaction and surcharging the soil in order to install traditional foundations. Once work had commenced Haswell recommended surcharging the soil and using conventional foundations. This was the most economic solution. Costain's tender was submitted on the basis of that approach.

A more detailed analysis was then produced and Haswell advised that piling should be used instead. A new foundation design was produced and Costain carried out that work.

This caused delay to the project, and Costain had to bear the additional cost of the foundation work. They brought a claim against Haswell for breach of its duty of care in recommending the foundation design, and claimed damages relating to the delay and additional costs.

The issues

There were three main issues:

- (i) Was Haswell in breach of its duty to exercise reasonable care in respect of the initial design?
- (ii) If so, could Costain recover as damages the additional earth work testing and additional piling costs required as a result of the neglect advice?
- (iii) On what basis can a party recover prolongation costs as a result of a delay to a construction project?

The Decision

The Judge held that Haswell was in breach of its duty to exercise reasonable skill and care in respect of the pre-tender design. The surcharge scheme (with conventional foundations) should never have been recommended. Piling was the obvious solution.

Costain was entitled to recover the cost of additional materials used as part of the ground treatment works and additional testing. They could also recover the cost of the piling. However, the costs relating to the prolongation costs for the delay was more complex.

Delay had clearly been caused. However, it did not follow that all of the prolongation costs for that period should be paid by Haswell. Costain needed to prove that each item of prolongation costs arose directly from the delay caused by Haswell. This was not as straight forward and obvious as Costain had assumed. The original claim of £3.5m was reduced to £163,000.

Comments

The most interesting aspect of this case relates to how the prolongation costs were awarded. The engineer was found to be negligent and had caused delay. However, this did not mean that the costs of the delay period would simply be awarded to Costain. Neither could they be pro-rated. Each of the individual costs needed to have arisen directly from Haswell's negligence. This meant that it was important to analysis in detail each of the actual costs arising during the period of delay. Costain were unable to establish that the costs of

maintaining this site during the period of the delay arose directly and only because of Haswell's breach.

Finally, because of the claim of £3.5m was reduced to £163,000, the legal costs claimed by Costain was also substantially reduced.

Nicholas Gould
October 2009