Fenwick Elliott

The construction & energy law specialists

International Quarterly

Issue 15, 2015

Our newsletter provides informative and practical information regarding legal and commercial developments in construction and energy sectors around the world.

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Contract Corner:

A review of typical contracts and clauses

Issue 15, 2015

When can you terminate for a failure to proceed regularly and diligently?

**By Simon Tolson, Partner
Fenwick Elliott**

Failure to proceed regularly and diligently/with due diligence

Countless building contracts require the contractor to carry out and complete the works by the completion date and also to proceed with the works regularly and diligently. This is widely agreed to require the contractor to proceed:

> *"…continuously, industriously and efficiently with appropriate physical resources so as to progress the works towards completion substantially in accordance with the contractual requirements as to time, sequence and quality of work." (Simon Brown LJ in West Faulkner Associates v London Borough of Newham.)*[1]

However, proving a lack of "*due diligence*" is notoriously difficult. Unless the contract provides otherwise, a contractor is entitled to programme and plan the works as it sees fit to achieve completion by the completion date.

(See *West Faulkner Associates v London Borough of Newham*[2] and *SABIC UK Petrochemicals Limited v Punj Lloyd Limited*.[3])

This particular issue was considered in the TCC cases, *SABIC UK Petrochemicals Ltd v Punj Lloyd Ltd*[4] and *Vivergo Fuels Ltd v Redhall Engineering Solutions Ltd* ibid. They establish the obligation of diligence is plainly linked to the parties' contractual obligations in each particular case. However, *SABIC* and *Vivergo* provide some useful general guidance as to how this obligation might be construed:

- Delay does not of itself provide conclusive proof of a lack of due diligence, but it may suggest and evidence a lack of due diligence (*SABIC*). Likewise the failure to produce a proper programme on which to plan the work or by which to monitor and manage the work is not decisive, but may suggest and evidence a lack of due diligence (*Vivergo*).
- Failing to achieve the programmed productivity because of inadequate resourcing will usually evidence a failure to proceed regularly and diligently (*Vivergo*).
- Where an employer is actively trying to manage and mitigate any delay caused by its contractor and requests the contractor to re-deploy resources to higher priority areas, this may jeopardise any subsequent claim that the contractor has failed adequately to resource the works. This is so even though the delay has been caused by the contractor's general lack of productivity and failure to proceed with priority areas in the first place. (*Vivergo*.)
- Poor labour management and inadequate supervision does not necessarily establish (on its own) that a contractor is not proceeding regularly and diligently (*Vivergo*).
- The fact that a contractual obligation (that is, achieving the completion date) has become impossible does not render the separate obligation of due diligence irrelevant or less onerous. The diligence obligation survives and instead attaches to the nearest possible approximation to proper contractual performance, namely, the contractual objective of minimising the ongoing breach. (*SABIC*).

In both cases, the contractor challenged the contractual termination and the employer resisted the challenge on the basis that the contracts had been validly terminated or, if they had not, that the failure to proceed diligently constituted a repudiatory breach of contract.

In both cases, the court considered that a repudiatory breach must:

- go to the root of the contract, and/or
- show an intention not to perform or that the party has expressed that it is or will be unable to perform the obligations under the contract in some essential respect.

In *SABIC*, the employer contended that the sheer scale of the delay and the contractor's deliberate failures to mitigate delay, its conscious over-reporting of progress, and its partial demobilisation constituted a repudiatory breach of contract.

However, the court (Mr J Stuart-Smith) considered that, although there were deliberate decisions made by the contractor not to comply with some of its contractual obligations, when viewed in its context the

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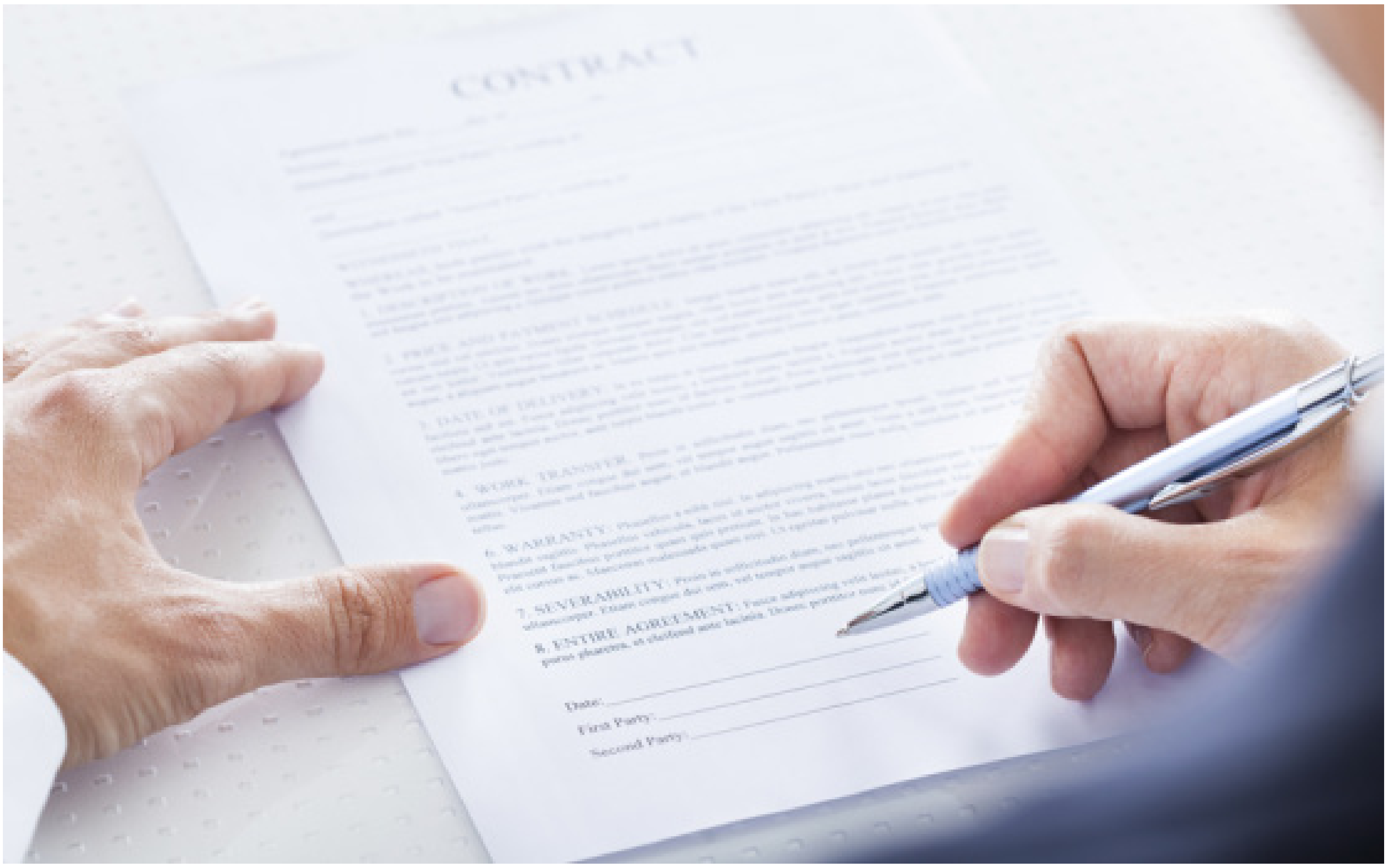

actions did not show "*an absolute refusal by [the contractor] to perform its side of the contract*". It was also stated that "*mere delay - even when substantial - is not necessarily to be equated with a renunciation of the defaulting party's side of the contract*".

In *Vivergo*, the employer argued that the contractor's failure to commit adequate resource during the project and the prolonged delay that arose as consequence of the contractor's performance, constituted a repudiatory breach of contract. However, the court found that the contractor's failure to proceed diligently with the works did not satisfy the criteria for a repudiatory breach.

The court's finding in *SABIC* did not influence the outcome of the case as it had already found that the employer had validly terminated the contract. Whereas in *Vivergo*, as the court had found that the employer had not validly terminated the contract using the contractual mechanism, the court's decision failed to save the employer's purported termination of the contract and led to the employer itself being in repudiatory breach.

Both cases show that a failure to proceed diligently with works may contractually entitle the employer to terminate the contract, but it is only in more extreme circumstances where a court may find such a failure to be a repudiatory breach of contract - such as, potentially, a full unlawful demobilisation that materially affects the progress of the works.

Footnotes

1. One of the writer's cases.
2. (1993) 71 BLR 1 at p14
3. [2013] EWHC 2916 (TCC);
4. One of the writer's cases.

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International Quarterly

Universal view:

International issues around the globe

Issue 15, 2015

The emerging framework for PPP projects in Ghana

By Kobina Hughes, Consultant Fenwick Elliott

On 3 June 2011 the Government of Ghana adopted a national policy on public private partnerships (PPPs). In March 2012, the World Bank approved support to Ghana's PPP programme. A key component of the World Bank programme was the enactment of a PPP law. In June this year the World Bank undertook a mid-term review of Ghana's PPP programme. The Bank noted in the review that a PPP bill has been drafted and is being finalised.[1]

This article considers a number of points that arise from the draft bill, namely one or two observations on regulatory certainty, risk allocation and how standardisation may help with this and post-award monitoring, the governing law deeming provisions, and allowing for a "*standstill period*" on contract award.

Section 133(6) of the draft bill (Validity of PPP Agreements etc.) provides that any PPP project initiated after the commencement of the Act is to comply with the provisions of the Act. Non-compliance could therefore render a transaction invalid and a key aspect of due diligence will therefore be to ensure that the transaction is Act-compliant. This may not be a straightforward exercise.

First, under ss. 2(1) and 2(4), the Act is to apply to all public sector projects undertaken through any forms of partnership between the public and private sectors where there is a clear agreement on shared objectives for the provision of public infrastructure and services traditionally provided by the public sector, as a result of which the private sector party performs part or all of the government's service delivery functions, and assumes the associated risks over a significant period of time. There is clearly some room for debate in this definition as to whether or not a project is actually a PPP project. Secondly, under s. 35, a project is not a qualifying PPP project unless it has been identified in one of a number of plans, those being the National Development Plan, the National Infrastructure Plan, the National Public Investment Plan, the District Development Plan, the national list of Strategic National Projects and a specific list of areas of investment identified by sector ministries. Finally, under s. 37, a PPP must be registered as such by the public body in question and (under s. 38(2)) any step taken after registration that is not in compliance with the Act, including the award of the contract for the PPP project to a bidder, "*shall not be valid and shall be of no effect*".

Stakeholders will therefore need to establish (1) that the project meets the definition in s. 2, (2) that the project is on one of the s. 35 lists, and (3) that the project has been duly registered under s. 38 before they can be confident that it will not at some stage be declared invalid. It will be interesting to see whether the final draft manages to reduce the number of hurdles that stakeholders need to get over in the interests of regulatory certainty.

The draft bill contains a number of provisions relating to public procurement, local content and dispute resolution. Whilst the desire to have everything in a framework PPP law in one place is understood, there is a risk that the Act

may contain provisions that conflict with the provisions of existing laws or which are less stringent (such as the Public Procurement Act 2003 which is in any event currently under review, the Petroleum (Local Content and Local Participation) Regulations 2013 and other local content legislation that is already in the pipeline, and the Alternative Dispute Resolution Act 2010).

Section 3(3) of the draft bill provides that:

> *"To enhance the attainment of the objectives of this Act, every PPP arrangement shall have a clear table or metrics showing the allocation of risks to the party best able to control and manage the identified risks.*
>
> *Contracting Entities and approval authorities shall take the risk allocation arrangement and the result of any Value for Money assessment into account in considering the applicable PPP method for any PPP Project."*

It would aid the programme if fundamental principles of risk allocation were known at the outset of each project, instead of all risk allocation being reviewed afresh for each and every project, and a degree of standardisation would help with this.

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The draft bill provides at s. 96 that the form of agreement to be used for each PPP Project shall be developed by the public body in question in collaboration with the responsible Division in the Ministry of Finance (and the office of the Attorney General), subject to guidance to be issued by the Minister of Finance from time to time on a range of matters, including the right of the private sector party to create security interests over the project assets, the right of the private sector party to assign rights under the PPP Agreement, compensation for specific changes in legislation and material changes, and takeover of the project by the public sector party.

Given that the government will probably not be providing direct funding to projects in most cases, the position on contingent mechanisms (guarantees of debt, exchange rates, the conversion of local currency, offtaker obligations and compensation on termination) could be made clear through standardisation. Only one section of the draft bill, s. 99, is devoted to contract management. Providing tools to ensure that quality standards and the pricing mechanism are being adhered to could also be dealt with through standardisation. Under s. 5(3) of the Act, the functions of the Minister of Finance set out in the Act are to be performed by the Ministry's Public Investment Division and the Division is currently leading on the development of standardised PPP documents and a PPP Manual/Guidelines for the effective management of PPP projects. In addition to standardising project documents (and the fundamental risk allocation matrix), the Division could set out its position on the preferred EPC contract platform for the various sector PPPs.

Departures from the standard documentation ultimately developed could be established as the exception rather than the norm, adopting lessons learnt from practice elsewhere. In the UK Building Schools for the Future programme for example, derogations from the standard form contracts were strongly discouraged and in the event that the stakeholders chose to make changes to the standard forms, a derogations table and business case justifying the changes were required to be submitted and the stakeholder seeking the changes was held responsible for all consequent legal costs.

Under s. 100 of the draft bill (Governing Law of PPP Agreements) the law of any PPP Agreement is to be the law of Ghana. However, the parties are to have autonomy over the choice of law in respect of agreements relating to lending or financing for the PPP project. Where the parties fail to exercise their autonomy over the choice of law relating to the financing Agreements, the laws of Ghana shall be deemed to be the applicable law to those Agreements as well. Should these provisions become law, stakeholders will be well advised to ensure that the transaction documents (whether standard or otherwise) accurately reflect their intentions as regards the choice of law in all the documents.

Under Article 23 of the 1992 Constitution of the Republic of Ghana, administrative bodies are required to act fairly and reasonably and comply with the requirements imposed on them by law, and in the event that they fail to do so, an application for judicial review may be made to the High Court under Order 55 of the High Court (Civil Procedures) Rules 2004. Recognised grounds for judicial review in Ghana include illegality, irrationality and procedural impropriety. Under s. 3(13) of the draft bill, public bodies are required to engage in "adequate stakeholder consultation" (as may be prescribed in Regulations) when implementing PPP projects. The statutory consultation requirements under the draft bill are to be welcomed. If enacted these provisions may have an impact wider than the PPP programme itself and aid the development of breach of a legitimate expectation to consult as further grounds of judicial review in Ghana, based on principles akin to "*the Gunning Principles*".[2]

Section 107(3) of the draft bill provides that a complaint about the award of a PPP contract cannot be lodged or entertained 21 days or more after approval of the award or if the PPP Agreement has been signed, whichever is earlier. This provision is likely to encourage stakeholders to rush to sign the PPP Agreement immediately on deciding to make the award in order to avoid having to deal with complaints by aggrieved bidders. One means of mitigating this risk would be to allow for a "*standstill period*". In the UK, Regulation 87 of the Public Contracts Regulations 2015 provides for a standstill period of between 10 and 15 days, during which "*the contracting authority must not enter into the contract*", and under Regulation 99(5) an aggrieved party may seek a "*declaration of ineffectiveness*" from the courts where an award is purported to have been made in breach of the standstill requirement.

Given the high-value, long-term nature of PPP projects, one poorly structured project could severely rock confidence in the programme. The final draft of the bill carries a huge burden and its publication (as well as publication of the standardised documentation being developed to accompany it) is eagerly awaited.

Footnote

1. A copy of the draft bill can be found on the Ministry of Finance website.
2. *R v Brent London Borough Council, ex parte Gunning* (1985)

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Commentary:

International dispute resolution & adjudication

Issue 15, 2015

Preservatory interim measures for not paying certified payments

By Ahmed Ibrahim, Partner Fenwick Elliott

Construction contracts typically provide for payment certification processes. To progress payment, the contractor, as a common practice, is required under the contract to provide a detailed breakdown of the work carried out for which payment is sought. After the valuation of the works by the certifier, usually the engineer, the contractor obtains an interim payment certificate or a final payment certificate, as the case may be. Standard forms generally provide for an employer's obligation to pay the certified payments within a certain time frame. For example, under Sub-clause 14.7 of the FIDIC Red Book, the employer shall pay the contractor:

> *"the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; and the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate".*

In case of conflict or dispute, employers may unilaterally opt to withhold payment of certified amounts regardless of whether grounds for such withholding exist or not. There are also cases where the employer suffers a lack of funding and consequently stops payment. These are not uncommon scenarios between employers and contractors or main contractors and subcontractors, and the ultimate result is a cash flow issue on the payee's part.

Unlike most common law jurisdictions, there is no statutory adjudication in the UAE. Adjudication might otherwise have been used by contractors in the above scenarios to obtain a binding but not final decision compelling the employer to pay. On the other hand, contractual adjudication does not appear to be an effective means in the UAE given the lack of enforcement teeth. As a result, contractors attempt to find alternative approaches to effect payments or at least to preserve their rights.

Legal action in reliance on payment certificates

Most construction contracts provide for arbitration as the ultimate means of dispute resolution. However, contractors tend to be reluctant to initiate arbitration unless they have no choice but to do so. This is understandably to avoid the significant costs, time and effort that are typically associated with any arbitration.

Instead, there may be cases where the contractor can at least preserve their rights by way of relying on Payment Certificates to obtain a preservatory attachment order. This approach may also be elected as a pressure tactic to motivate the employer to settle certified payments. From an employer's perspective, an early settlement, given the attachment over its own assets, would obviously be a preferable route.

A preservatory attachment order is a legal method of freezing/holding assets on a temporary basis until a final judgment is issued in the merits of a dispute. Attachment orders may apply to assets or monies in the possession of the debtor (the "Possessed Assets"), or on assets owned by the debtor that are in the custody of a third party (the "TP Assets"). Examples of Possessed Assets are the company's movable assets, vehicles, equipment, office furniture, etc. Examples of TP Assets are the funds in the company's bank accounts, company shares listed in the capital market, shares and bonds owned by the company in the custody of a third party and any other due entitlements of the company with a third party.

Preservatory attachment orders are issued *ex parte*, meaning without having to first notify the debtor, by a summary judgment in most cases within the same day of the application. *Ex parte* attachment orders are designed to provide urgent relief, for instance because there is a risk that the assets in question would be dissipated if the respondent was given notice of the application. To issue an attachment order the summary judge must see proof of a debt. UAE law provides very little guidance on the meaning of debt except that it be liquid and due. In practice, the UAE courts tend to treat Payment Certificates as sufficient proof of an acknowledged debt.

Before issuing such an attachment order, the summary judge usually requires the applicant to sign an undertaking declaring its responsibility for any losses incurred by the debtor should it be proved later that the applicant had no right to seek such an order.

A preservatory attachment order on the debtor's assets is provided for under Articles

Commentary:

140 and 252 of the UAE Civil Procedure Code (the "*CPC*"), which sets the general rules of the preservatory attachment orders. Particular provisions covering the procedures for attachments over Possessed Assets and TP Assets are found in Articles 253–266 of the CPC.

The summary judge has a wide discretionary power to allow or dismiss an application for an attachment order. In practice, for the application to succeed, the applicant must show a debt and a risk that the debtor's assets may be dissipated before a final decision on the merits of the dispute has been rendered.

Effective pressure tool

In practice, the use of preservatory attachment orders to apply pressure to motivate payment seems to be a successful tool in many cases. To apply efficient pressure on the employer, the contractor would obviously need to ensure the obtaining of a broad order that particularly includes the freezing of the employer's bank accounts. To do so, specific banks must be notified so that the summary judge can order them to disclose the debtor's accounts. It is worth noting that seeking the summary judge's order to identify the bank accounts of the debtor through the UAE Central Bank will likely fail because this function is not provided for in the Central Bank's laws and regulations.

If the employer is a publicly listed company, an attachment over its shares in the capital markets would certainly be a serious and effective pressure factor.

After a preservatory attachment order is rendered, the contractor must file an application called a Validation of Attachment Order and Establishment of Substantive Rights (the "*Validation Application*"). This is a mandatory action that the creditor should take within eight (8) days, starting from the date on which the attachment order is issued.

The Validation Application includes two aspects: (i) validation of attachment order, and (ii) establishment of substantive rights. Since the contract likely contains an arbitration agreement, the state court judge would have no jurisdiction to hear the substantive merits of the dispute. In this case, the common practice is that the applying party seeks the judge's decision merely with regard to the first aspect (the validation of attachment). However, the summary judge would need to see proof that at least a request for arbitration has been filed. To do so without incurring considerable cost, contractors commonly file a simply drafted request for arbitration with payment of the arbitration registration fees, which are relatively low (e.g. AED 5000/US Dollar 1361 for DIAC cases).

The employer will be notified that a Validation Application has been filed and will be invited to provide written submissions and attend a hearing on the same.

As such the employer's reaction to a preservatory attachment order can either be to wait until the Validation Application has been filed by the contractor, or to immediately file a grievance before the same judge who issued the attachment order. In either case, the employer would need to challenge the payment certificates, if possible, and deal with the risk that the element of danger that its assets will be dissipated prior to the arbitration being resolved.

In practice, employers tend to adopt an amicable settlement approach to avoid undesirable consequences of attachment orders. The use of this pressure tool is widely common in the UAE; however, legal advice must be sought to ensure that the strategy can be adopted in the particular circumstances, and that the attachment application is properly filed.

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Contract Corner:

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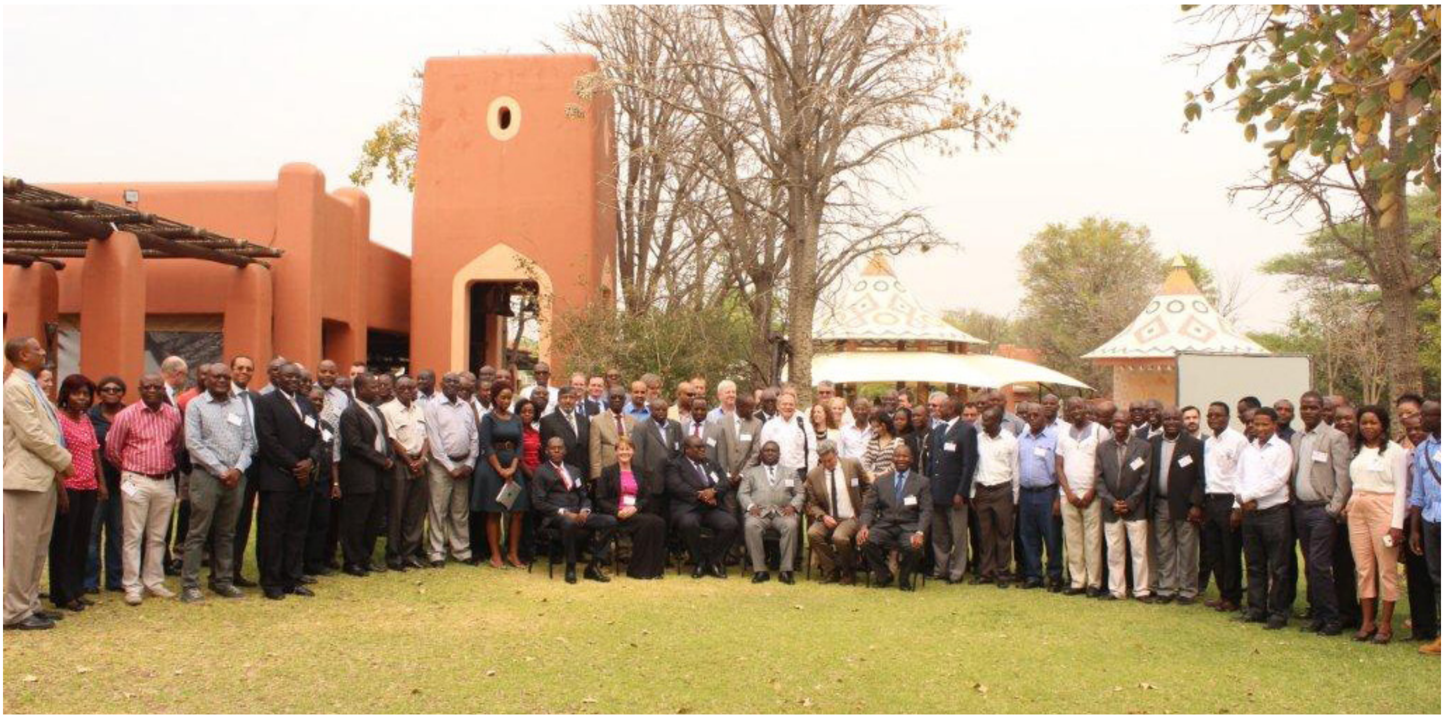
Employer claims under the FIDIC form



By Jeremy Glover, Partner Fenwick Elliott

At the inaugural FIDIC Africa conference, held in Zambia on 12—15 October 2015 (photo above), there was discussion about FIDIC's plan for revising their Rainbow Suite of Contracts. One point which struck me was the suggestion that FIDIC are giving serious consideration to making the employer's right to bring claims subject to a similar condition precedent to that currently imposed upon the contractor by sub-clause 20.1. By condition precedent we mean that if a claim is not made within the time limits imposed by that clause, then the right to make the claim will be lost. FIDIC has always tried to ensure that its suite of contracts is as balanced as possible and this might be one way to maintain parity.

This is an interesting possibility. Currently the standard sub-clause 2.5 of the FIDIC form states that:

> *"If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract … the Employer or the Engineer shall give notice and particulars to the Contractor. …*
>
> *The Notice shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the claim. … The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract.*
>
> *The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause."*

There is no similar provision to sub-clause 20.1 which says that any claim to time or money will be lost if no notice is given within the specified time limit. As a consequence, it has generally been considered that a failure by the employer to bring a claim *"as soon as practicable"* would not be treated as a condition precedent. That said, any notice relating to the extension of the Defects Notification Period had of course to be made before the current end of that period.

What made FIDIC's comments especially interesting was that they coincided with the release of a decision by the Privy Council in

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the case of *NH International (Caribbean) Ltd v National Insurance Property Development Company Ltd (Trinidad and Tobago)*.[1] The Privy Council is effectively the Supreme Court for many Caribbean countries.

The case itself was a long-running dispute arising out of a contract, under the FIDIC Red Book, to construct a new hospital in Tobago. In short, an arbitrator had decided that the contractor was entitled to terminate the contract as a result of a failure by the employer to provide proper evidence that it held funds to cover the contract price. Sub-clause 16.4 provided that in such circumstances, the contractor was entitled to be paid loss of profit and other losses arising as a result of this termination.

One of the defences raised by the employer was an attempt to set off claims of its own against the contractor. The contractor said that the employer could not do this, as the claims had not been notified in accordance with sub-clause 2.5. The arbitrator at first instance agreed that the employer was entitled to bring these claims because "*clear words are required to exclude common law rights of set-off and/or abatement of legitimate cross-claims*". The arbitrator felt that the words of clause 2.5 were not clear enough.

However, the Privy Council agreed with the contractor, noting that it was hard to see how the words of clause 2.5 could be clearer. Lord Neuberger said that the purpose of sub-clause 2.5:

> *"is to ensure that claims which an Employer wishes to raise, whether or not they are intended to be relied on as set-offs or cross-claims, should not be allowed unless they have been the subject of a notice, which must have been given 'as soon as practicable'. If the Employer could rely on claims which were first notified well after that, it is hard to see what the point of the first two parts of clause 2.5 was meant to be. Further, if an Employer's claim is allowed to be made late, there would not appear to be any method by which it could be determined, as the Engineer's function is linked to the particulars, which in turn must be contained in a notice, which in turn has to be served 'as soon as practicable'.*

Lord Neuberger continued:

> *"Perhaps most crucially, it appears to the Board that . . . although the closing part of clause 2.5 limits the right of an Employer in relation to raising a claim by way of set-off against the amount specified in a Payment Certificate, the final words are 'or to otherwise claim against the Contractor, in accordance with this sub-clause'. It is very hard to see a satisfactory answer to the contention that the natural effect of the closing part of clause of 2.5 is that, in order to be valid, any claim by an Employer must comply with the first two parts of the clause, and that this extends to, but, in the light of the word 'otherwise', is not limited to, set-offs and cross-claims."*

The Privy Council felt that the words "*any payment under any clause of these Conditions or otherwise in connection with the Contract*" were of very wide scope. Sub-clause 2.5 made it clear that if the employer wanted to raise such a claim, it must do so promptly and in a particularised form. Finally, the Privy Council felt that the purpose of the final part of the clause was to emphasise that, where the employer has failed to raise a claim as required by the earlier part of the clause, the back door of set-off or cross-claims is:

> *"as firmly shut to it as the front door of an originating claim".*

What the Privy Council did not do was provide any definition of "*as soon as practicable*". Therefore this is likely to be a question of fact depending on the circumstances of each particular project. However, the judgment of the Privy Council does suggest that employers too might be subject to a time bar, under the FIDIC form at least. Indeed it might be that depending on the definition of "*as soon as practicable*" that time bar is potentially stricter that the 28-day time bar contractors are subject to.

Further, it is a time bar in two parts. Not only must the employer make a claim "*as soon as practicable*", but the employer must also provide particulars or other substantiation; again the absence of these could prove fatal to the right to assert a right of set-off. Obviously employers (and those acting as employers' representatives) should take careful note of this decision, and ensure that any claims are promptly notified to the contractor.

So perhaps there is no need for FIDIC to make any changes to sub-clause 2.5 after all. If the Privy Council decision is followed, it would appear that the right of employers and contractors alike to bring claims under the FIDIC form may both be subject to certain conditions precedent that must be followed to ensure that potentially valid claims can be duly adjudicated upon.

Footnote

1. [2015] UKPC 37

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International Quarterly

News and events

Trends, topics and news from Fenwick Elliott

Issue 15, 2015

This edition

Fenwick Elliott opens Dubai office

The firm's practice in the MENA region has seen steady growth in recent years, particularly in the energy and power sectors, and we advise on various general commercial and corporate matters relating to a wide range of construction projects in the UAE and MENA region.

The partners of Fenwick Elliott and Ibrahim Law Firm are delighted to announce that we have now opened a new office in Dubai, headed up by partner Nicholas Gould. This exciting development builds on our many years' experience advising clients on construction and energy projects in the region, and on our close partnership with Dubai-based Ibrahim Law Firm, whose partners Ahmed Ibrahim and Heba Osman have joined our new branch, further strengthening the team. The new branch is based at Jumairah Lakes Towers, Dubai. For more information about our new office and the services we provide please contact Susan Kirby, skirby@fenwickelliott.com.

Fenwick Elliott in Ghana

We have a strong interest in Africa and African affairs and have been working with clients on a variety of infrastructure and energy projects in a number of African countries for some time now (Ethiopia, Ghana, Nigeria, North Africa, Sierra Leone, South Africa, Sudan, Uganda,). Our involvement in Sierra Leone has been through the Construction and Development Partnership (CODEP), a construction industry-led development charity of which Jeremy Glover is a trustee. We see our firm's ethos and specialist areas of work (construction and energy) as being a natural fit for work with clients in Africa.

You will have noticed an article by Kobina Hughes in this edition of IQ about PPP projects in Ghana. We are very pleased that Kobina is part of Fenwick Elliott's team as a Consultant. He has already been advising on various power projects in Ghana. Kobina qualified as a UK solicitor and then spent many years in private practice and in the public sector in the UK before deciding to live and work in Ghana in 2012. He was called to the Ghana Bar in 2014.

Ankara and Istanbul Seminars, November 2015

We are hosting follow-up seminars to the FIDIC workshops we held in Turkey earlier this year. These seminars will take place in Ankara and Istanbul on the 17 and 19 November 2015 respectively.

In this seminar Fenwick Elliott partners Nicholas Gould and Jeremy Glover will:

- focus on forms of international contracts, including FIDIC
- consider key aspects of English contract law
- examine how English law contracts are used in Middle East projects
- briefly consider some aspects of Middle East law

If you would like to be put on the invitation list for these seminars please email Susan Kirby, skirby@fenwickelliott.com.

Fenwick Elliott's *Annual Review 2015/2016*

Our *Annual Review* which features a round-up of key developments in the construction, engineering and energy arena, is now available to download from our website,

www.fenwickelliott.com. Some of the topics covered include:

- Descoping in construction contracts in the UAE.
- The court of Appeal in Persero II: how to enforce "binding and non-final" Dispute Board decisions under the FIDIC form of contract.
- Time bars in an international context.

The *Review* is available to download from our website. Please contact Susan Kirby, skirby@fenwickelliott.com, if you would like to receive a copy of this publication.

This publication

We aim to provide you with articles that are informative and useful to your daily role. We are always interested to hear your feedback and would welcome suggestions regarding any aspects of construction, energy or engineering sector that you would like us to cover. Please contact Jeremy Glover with any suggestions jglover@fenwickelliott.com.

***International Quarterly* is produced quartely by Fenwick Elliott LLP, the leading specialist construction law firm in the UK, working with clients in the building, engineering and energy sectors throughout the world.**

International Quarterly is a newsletter and does not provide legal advice.

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