

RESOLUTION

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Professional Quantity Surveying Services & Alternative Dispute Resolution Services

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What is “time at large”?

Is “time at large” to the contractors/sub-contractors best advantage for a claim and adjudication?

What is time at large?

Time at large means there is no date fixed for completing the building works or time period set for completing the works, or such times and dates as agreed no longer apply. Letters of intent often give instruction to commence saying how much and for what, but give no indication of how long it is all going to take. In such circumstances time will be said to be “at large”, but also there will be “no contract”. A “contract” must have price, time and scope clearly defined and more, for the purposes of statutory Adjudication. If time is “at large” in this instance then statutory adjudication is likely to fail.

The second instance of “time at large” occurs dur-

ing the works where time and possibly the extension of time machinery has all been agreed. This is more complex, but instances of breakdown in the machinery are where the contract administrator is no longer able to or has failed to operate the time mechanism. It is rare for such an instance to occur. In Berhard’s Rugby Landscapes Ltd v Stockley Park Consortium (No.2) (1998) BRL the contract administrator breached the contract by not operating the extension of time mechanism. It was held that the time machinery had to be either no longer capable of being achieved or not likely to be achieved to make “time at large”. In other words the time machinery must be frustrated and permanently “out of action”. This is further supported by the recent Wembley stadium case Multi-plex Constructions (UK) Ltd v Honeywell Control

Systems Ltd (No.2) (2007) EWHC 447 (TCC) where “time at large” was argued by Honeywell, the court held the time extension machinery remained operational and was operated, so time was not at large. Is there any advantage of time being “at large”? Once established that time is at large, the contractor/sub-contractor will no longer be liable for liquidated and ascertained damages. The contract must then be performed in a reasonable time. The word “reasonable” is open to interpretation and depends on questions of fact and circumstances which will cause legal difficulties. Effectively, the contractor will have to demonstrate what a “reasonable” time is. The employer, will still - (cont’d ...)

What is “time at large” (cont)

have the right to claim common law damage for delays caused by the contractor, so the employer will attempt to demonstrate the time taken is not “reasonable”. The burden of proof is strictly on each side to prove, more so and more difficult than when the time machinery exists. There is also an argument that a contract without time machinery will be precluded from statutory adjudication, particularly where time was not agreed at the start. There is a risk of vitiating the contract and making claims more difficult by changing a time

mechanism to “time at large”. It is far more preferable to use a contract provision for extensions of time as opposed to a common law claim. The claim will need to be proved in any event. However, if there is a real risk of liquidated damages being levied and difficulties in making a valid claim, claiming “time at large” might be the best option.

If you require any further advice on “time at large” please contact Arbicon on 01480 426560 or advice@arbicon.co.uk

The contracts in writing debate continues

Which way do you go on the contracts in writing debate?

Strong arguments for and against have recently been cited by eminent construction lawyers. The dti (department of trade and industry) are currently proposing that the Construction Act should be changed from its present form to allow oral contracts, rather than strictly applying to contracts only in writing. This represents a significant shift from their original proposals. This now intends to reduce the practice of jurisdictional challenges where terms are not in writing or have been varied by oral agreement and the time and expense of both sides debating this alongside the adjudicator’s decision on it. Recent court cases have distinguished between “contract in writing” and “equitable agreements in writing”, the former being capable of being adjudicated and the latter is not. The case for keeping the construction act un-amended, has been strongly advocated and simply considers that to open up adjudication to all “contracts” and “agreements” in whatever form, will give the adjudicator too much power to decide what the contract is or is not. The middle ground appears to consist of acceptance that oral as well as written agreements should be capable of being adjudicated under the Construction Act but expanding the definition of “agreement” should not be permitted. Briefly, it requires a distinguishing of contracts and agreements, the former capable of adjudication as the dispute resolution tool and the latter not. The debate rumbles on and clearly will continue beyond the June proposals from the dti and the response deadline in September. Where do you sit? Let us know if you have any strong views on the contracts in writing debate.

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