



Case Study (E.02): Expert Appointment

Major New Hospital

The project

The project was the construction of a six-storey hospital in Chelsea, London, for the Royal Brompton Hospital NHS Trust. Practical completion was achieved in 1990, some 43 weeks later than the original completion date for the project. However, in 1992, the Contractor commenced Arbitration proceedings against the RBH Trust claiming £17 million for prolongation and loss & expense. In 1995, prior to the commencement of a 40 week hearing, the dispute was settled with the RBH Trust making a payment of £6 million to the Contractor.



The dispute

In 1997, the RBH Trust served a Statement of Claim with allegations of negligence against the members of their professional team involved with the project, i.e. Architect, Project Manager, etc., seeking to recover the settlement amount paid to the Contractor plus their own Arbitration costs.

The Action resulted in a series of trials taking place in the Technology and Construction Court between 1999 and 2002.

The Expert appointment and instructions

Roger Gibson was appointed by the RBH Trust's lawyers as an Expert for planning and programming matters in the action against the member of professional team (a total of 17 number Defendants).

His principal instruction was to prepare an Experts' report on 'what were the real causes of the 43 weeks delay to completion of the project'; and, to 'ascertain by what point during the progress of the works total delays amounted to the period which, in the event, was the period by which the Works were late in being completed, i.e. 43 weeks'

He was instructed not to give opinion as to whether the Architect was negligent in his assessment of the Contractor's extension of time submissions and his subsequent eot awards; this was to be given by the Instructed Expert on architectural matters.

Similarly, he was instructed not to give opinion as to whether the Project Manager was negligent in his advice and awareness to the RBH Trust on delays occurring on the project; this was to be given by the Instructed Expert on project management matters.

The Trial & Judgment

Experts' reports were exchanged; Experts' meetings took place; and a trial at which Roger Gibson testified was held before HH Judge Seymour QC in November 2000.

In his Experts Report, Roger Gibson identified the 'events' that caused the 43 week delay to completion of the project. The 'events' were classified into Relevant Events, that gave the contractor entitlement to an extension of time under the contract, and culpable events which were the contractor's responsibility. Concurrency of 'events' was also addressed in the Experts Report, with Roger Gibson expressing his opinion on when a Relevant Event occurs and the contractor is in culpable delay.

Roger Gibson was the only Planning & Programming Expert who testified at the trial; the Defendants did not call their Experts to give evidence.

The Judgment was issued on 18 December 2000, (*Royal Brompton Hospital NHS Trust v Frederick A Hammond & Ors [2000] EWHC Technology 39*), and included the following in paragraph 31,

"However, it is, I think, necessary to be clear what one means by events operating concurrently. It does not mean, in my judgment, a situation in which, work already being delayed, let it be supposed, because the contractor has had difficulty in obtaining sufficient labour, an event occurs which is a Relevant Event and which, had the contractor not been delayed, would have caused him to be delayed, but which in fact, by reason of the existing delay, made no difference. In such a situation although there is a Relevant Event, 'the completion of the Works is [not] likely to be delayed thereby beyond the Completion Date' "

"This situation obviously needs to be distinguished from a situation in which, as it were, the works are proceeding in a regular fashion and on programme, when two things happen, either of which had it happened on its own, would have caused delay, and one is a Relevant Event, while the other is not. In such circumstances there is a real concurrency of causes of the delay. It was circumstances such as these that Dyson J. was concerned with in the passage from his judgment in 'Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltd Dyson J. adopted the same approach as that which seems to me appropriate to the first type of factual situation which I have postulated when he said, at paragraph 15 on page 38 of the report:-

'It seems to me that it is a question of fact in any case whether a relevant event has caused or is likely to cause delay to the works beyond the completion date in the sense described by Colman J. in the Balfour Beatty case'.

Roger Gibson's instructing lawyers were, Masons, London (now Pinsent Masons); partner in charge, Mr Peter Cassidy.