



Royal Brompton Hospital NHS Trust v. Frederick Alexander Hammond and Others (2000)

The Facts

The project was the construction of a six-storey hospital, known as 'The National Heart and Chest Centre Phase 1', in Chelsea, London for the Royal Brompton Hospital NHS Trust. Taylor Woodrow was the main contractor, and practical completion was certified as being achieved on 23 May 1990, some 43 weeks and 2 days later than the original completion date for the project. In total, the architect awarded an extension of time of 43 weeks and 2 days, thereby revising the date for completion to 23 May 1990.

The contractor claimed loss & expense from the hospital for delays. Some money was paid by the hospital, and in 1992 the contractor commenced arbitration proceedings against the RBH Trust for the remainder of its claim.

In 1995, prior to a hearing, the arbitration was settled with the employer 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 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 Judgment

The Hospital's main case against the architect was that the contractor was responsible for the delays but the breaches and negligence of the architect had so weakened the hand of the Hospital in the arbitration that instead of recovering from the contractor liquidated and ascertained damages and the loss and expense already paid to the contractor, it paid out further sums to the contractor plus costs of £15 million.

One of the key points in the Trusts case was that in determining a fair and reasonable extension of time the architect failed to determine the actual critical path of the contractor's works and that extension of time awards had been given for non-critical path works.

Further, the Trust alleged that the architect had failed to determine the contractor's actual progress against its programme and had not examined the reasons for delay against that programme and the actual progress of the works in assessing the applications for extensions of time.

A key issue in this case was 'concurrency'. On this issue, Judge Seymour distinguished between sequential causes of delay and true concurrency, stating,

"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'. The Relevant Event simply has no effect on 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 real concurrency of causes of delay."



Judge Seymour also gave his view on the analysis that is required to demonstrate delay and the available float by saying,

"All activities have potential or theoretical float (even if the period is negative). What is required is to track the actual execution of the works. On a factual basis this case requires no further discussion. In addition clause 25 refers to "expected delay in the completion of the Works" and for the need for the Architect to form an opinion as to whether because of a Relevant Event "the completion of the Works is likely to be delayed thereby beyond the Completion Date". Under the JCT conditions, as used here, there can be no doubt that if an architect is required to form an opinion then, if there is unused float for the benefit of the contractor (and not for another reason such as to deal with p.c. or provisional sums or items), then the architect is bound to take it into account since an extension is only to be granted if completion would otherwise be delayed beyond the then current completion date."

Commentary

The important matters that are gleaned from this case and judgment are,

- i) In determining a fair and reasonable extension of time as a consequence of a delay event, an examination of the actual critical path of the contractor's works should be carried out to establish that the delay event affected, or was likely to affect, the completion of the works. Furthermore the work activities that were critical to the forward progress of the works at the time the delay event occurred should be taken into account.
- ii) The matter of concurrency should be looked at closely to determine those events are sequential and those that are truly concurrent.

Judge Seymour also noted that in order to make an assessment of whether a particular delay event affected the completion of the works and not just a work activity, he considered it correct to take into account what work activities were critical to the forward progress of the works, at the time the delay event occurred.

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