

**Great Eastern Hotel
Company Ltd v John
Laing Construction Ltd
[2005] EWHC 181 (TCC)**

Trina Lincoln

Associate

Kensington Swan

In February 2005, judgment was handed down in the case Great Eastern Hotel Company Ltd v John Laing Construction Ltd. The Great Eastern Hotel case considered numerous other issues that may be of interest to those who practice or work in the area of construction law: too many to consider in a single article. It is intended over the next few issues to discuss various aspects of the case and the judgment.

This article outlines the facts and considers the Court's findings in respect to what the obligations of a Construction Manager are and the extent that a Construction Manager can be held liable for any breach of those obligations.

THE FACTS

In 1997, the parties entered into a construction management agreement for the construction of the Great Eastern Hotel. The Great Eastern Hotel is a London landmark being located at the Liverpool St Station terminus since the late 19th century. The Hotel was purchased in the mid 1990's by the Great Eastern Hotel Limited which was a consortium between Conran Holdings Limited and Wyndham International Limited. The intention of the parties was to develop the existing buildings (that were of varying styles and upkeep and quite dilapidated) into a top quality hotel in the City of London.

John Laing Construction Ltd (Laing) were engaged to carry out the role of construction manager in the refurbishment and extension of the Hotel.

The scope of the Project was significant and included demolishing the existing fourth and fifth floors and associated mansard roofs (but retaining

features such as the corner and central towers) and demolishing the centre of the building down to sub-basement level and then re-building the area to create a large central atrium with an additional 2.5 floors to create a total of 266 guest bedrooms. Remodelling was also required in the lower levels to accommodate specialist restaurants and banqueting facilities, kitchens, staff areas and plant rooms. The initial budget figure for the project was GBP34.8m, and the final out-turn cost from GBP61m.

Following a competitive tender, the Hotel engaged Laing as Construction Manager with the intention that Laing would manage and co-ordinate the redevelopment of the hotel, with the actual works being undertaken by various specialist trade packages.

In addition to Laing, the Hotel had a large team of professionals advising on specific issues including an Architect, Structural Engineer, Cost Consultant/QS, Project Managers, planning supervisors, M & E Engineers and interior and kitchen design consultants.

Works commenced in mid 1997 and practical completion was granted in July 2000. The Hotel subsequently commenced proceedings alleging that Laing so misconducted itself as Construction Manager that the completion of the project was delayed by 44 weeks. As a result of these delays, the Hotel alleged that it was unable to earn revenue over that period and was required to pay additional sums to its professional team and trade contractors. The total claimed against Laing was in excess of GBP17m under various causes of action.

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THE CASE

The claim itself took some three years to proceed to a hearing. The actual hearing itself took more than 35 hearing days in 2004.

Numerous experts were called for both parties including planning/programming experts, construction management experts, cost consultant/QS experts and accounting experts to assess to the loss of income element of the claim. The judgment addresses each of these areas of the claim along with other related matters: the first to be dealt with in these articles relates to construction management.

WHAT IS CONSTRUCTION MANAGEMENT?

Construction Management is a recent development in the construction industry. It was developed to take into account the increasing reluctance of major contractors to undertake all the risks inherent in a standard main contract.

The way in which it works is that the construction manager manages the project for a fee but does not accept any of the risks of time or cost – these risks remain with the client.

The obligations of a construction manager include an obligation to plan and programme the works, to organise the project, to co-ordinate the various different trade packages and to minimise the risks to the client.

The advantages to a client in this form of procurement are that the works can be started before design is complete and, the responsibility for the management of the construction is handed over. The main disadvantage is that the client directly contracts with each trade

contractor and retains the risk of time and cost.

For the construction manager, the advantage is that they do not take on any of the risks of time or cost and simply manage the project for an agreed fee.

ARE THE OBLIGATIONS OF A CONSTRUCTION MANAGER ABSOLUTE?

Obviously, the answer to this lies in the exact terms of the Construction Management Agreement in issue. In this case, the agreement included the following clauses:

Clause 2.1

The client appoints a Construction Manager as Construction Manager and the Construction Manager hereby accepts such an appointment and agrees to carry out and complete the Services fully and faithfully and in the best interests of the client and in accordance with the terms and conditions of this Agreement....

Clause 3.1

The Construction Manager shall proceed regularly and diligently with the services and will continue to exercise in the performance of the services all the reasonable skill, care and diligence to be expected of a properly qualified and competent Construction Manager, experienced in carrying out services for a Project of a similar size, scope and complexity to the Project.

In addition, the obligations of Laing in relation to trade contracts included:

Clause 3.4

The Construction Manager shall further procure that each Trade Contractor complies with all of its obligations under and all the requirements of, their respective Trade Contracts.

Clause 2.8

To provide such management, control, administration and planning with the work with the Trade Contractors so as to ensure full compliance by the Trade Contractors with all the requirements of their respective Trade Contracts.

The issue arose as to whether the above clauses and the construction management agreement as a whole imposed absolute obligations on Laing to take all steps available to it to ensure compliance by the trade contractors with the terms of the trade contracts. In essence, Laing was to see to it that things happened.

The claimant relied on the case of *John Mowlem & Co.*¹ in which the Court held that the obligations case on a management contractor, which were to secure 'the commencement of that section and ensure the regular and diligent progress thereof ...and shall secure the completion of the same on or before the completion date...,' amounted to an absolute obligation.

The defendant disagreed saying that the Mowlem case related to management contracting which provides for the completion of a project rather than a contract for the provision of services (as this was). The defendant submitted that the effect of strict compliance would result in Laing taking on responsibility similar to a main contractor notwithstanding that the trade contractor contracted directly with the Hotel and not Laing. For example, Laing would be responsible for non performance and defective workmanship of any trade contractors.

The Court held that the construction management agreement did not impose an absolute obligation as to do so would be inconsistent with the agreement between the parties.

The Court also discussed the other obligations of Laing in relation to the management of the Project: these issues will be considered in the next article as they are related to the delay experienced on the project.

REFERENCE

1 .1995 CILL 1047

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