

Grove Developments v Balfour Beatty

By Dominic Keene
Senior Consultant

Background

Balfour Beatty were engaged by Grove Developments to design and construct a hotel and serviced apartments in Greenwich, London.



The Contract was based on an amended JCT Design and Build Contract 2011, which defined the Date for Completion of the Works as 22 July 2015.

Grove Developments and Balfour Beatty had agreed a payment schedule of 23 valuation and payment dates, covering the period up to July 2015.

The project was delayed, and completion was not achieved on 22 July 2015. Following an application for payment by Balfour Beatty in August 2015 [known as "IA24"], and a Pay Less Notice by Grove Developments in September 2015, Grove sought a declaration under Part 8 proceedings that Balfour Beatty had no contractual right to IA24, or any further interim payments.

Grove Developments Ltd v Balfour Beatty Regional Construction Ltd [2016] EWHC 168 (TCC)

It was found that the Scheme for Construction Contracts did not take effect, as the payment schedule was a legally binding agreement that satisfied the requirements of the Housing Grants Construction and Regeneration Act. The effect of this decision is that Balfour Beatty were not entitled to any further interim payments, until practical completion.

Citing *Arnold v Britton*, Mr Justice Stuart-Smith repeated the courts unwillingness to rescue a party from a bad bargain.

Balfour Beatty Regional Construction Ltd v Grove Developments Ltd [2016] EWCA Civ 990 (Court of Appeal)

Balfour Beatty appealed the TCC's decision, claiming:

The payment schedule "expressly or impliedly provided for continuing interim payments" (past IA23);

If the payment schedule did not provide for continuing interim payments, then the Scheme for Construction Contracts applied; and,

A new agreement for future interim payments had been made during July and August 2015, as both parties did intend to make future interim payments.

The Court of Appeal upheld the earlier decision, despite Lord Justice Vos's dissent, finding that the interim payment schedule provided an adequate (if, at least retrospectively, not acceptable to Balfour Beatty) payment mechanism in accordance with the Act; the Scheme did not apply and that no further payment agreement had been concluded.

Conclusion

The case is a reminder that the courts will only interpret a contract according to its natural language. When agreeing the terms of contract parties should take particular care to ensure that the payment provisions allow for unforeseen delays to the contract.

ABOUT THE AUTHOR



Dominic Keene

Dominic is a quantity surveyor with over 10 years' experience and is a Member of the Chartered Institute of Arbitrators.

He has worked for major building and civil engineering contractors, subcontractors and employers on a number of high profile building, energy, offshore, infrastructure and civil engineering projects within the UK and Europe.