

It's about time: the court gives guidance on time bars in construction contracts

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Many of our public sector clients regularly undertake building works using NEC3 and NEC contracts and works worth an estimated £4 billion have been carried out, for example, under the Procure 21+ Framework, which is based upon the NEC3 ECC contract. Many clients will therefore want to keep abreast of developments in case law relating to these contracts.

The recent case of Sitol UK Ltd v Finegold and another [2018] acted as a harsh reminder of the importance of complying with contractual time limits. Sitol were engaged by the Finegolds to undertake tiling work as part of a large refurbishment project at their home under an NEC3 Engineering and Construction Short Contract. Importantly, as it was a residential project, the Construction Act was not applicable (as if the work was covered by the Act adjudication could be brought at any time).

Sitol brought proceedings against the Finegolds to seek enforcement of an adjudication decision that the Finegolds were liable to pay Sitol £44,838.38 for work done. The Finegolds argue that they should not have been named in the adjudication and enforcement proceedings, on the basis that Sitol had in fact contracted with Proman Ltd, who acted as their main contractor on their multi-million pound redevelopment project.

Crucially however, the Finegolds also argued that the referral to adjudication was made out of time. The contract in question required a party to refer any dispute to an adjudicator 'within **four weeks** of becoming aware of it', and it was clear that Sitol had not complied with this time bar.

The decision

In the enforcement proceedings it was held that the tiling contract was between the Finegolds and Sitol, and that Proman Ltd as their Project Manager had merely acted as agent.

It was further held that the dispute was referred to adjudication out of time. The dispute was brought to the attention of Sitol by letters from the Finegolds expressly rejecting their claim sent on 19 February 2018. Sitol then failed to issue a Notice of Adjudication or otherwise notify the Finegolds of the dispute until 25 April 2018, being outside the four week time limit.

As a result, summary judgment was declined by the Technology and Construction Court.

Implications

This appears to be the first case to apply the time limits set out in an NEC3 and NEC4 Contracts. There are a number of time limits in the NEC3 and NEC4 Contracts, and while it is important to remember that this particular case will not be applicable where the Construction Act applies, the decision is a clear indication that time limits will be enforced in all areas and not just adjudication.

The judge added that he had 'no great enthusiasm' for the point, but was bound to apply the law. It will be interesting to see whether attempts will be made in the future to dilute the impact of the provision and this decision.

Impact on the public sector

Public sector bodies should stay alert to all the ticking clocks within NEC3 and NEC4 contracts, as even if this particular decision on adjudication is limited to contracts outside the Housing Grants Act, missing any time bar will have serious consequences.

If you are unsure of how this applies to your contract, please contact us for further advice.

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