

Construction Law Focus

CHAN TAN & PARTNERS

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NO.1 COLOMBO COURT #09-26/27 SINGAPORE 179742

Insurance - clause in sub-contract required plaintiffs to "provide insurance for the beam, all equipments, machineries and personnel" - claim by plaintiffs against the defendants in negligence, and breach and repudiation of contract - defence that because of the insurance clause - the plaintiffs were not entitled to pursue claim against defendants for damage to the equipment

Walter Wright Mammoet (Singapore) Pte Ltd v. Resources Development Corp Pte Ltd [1994] 3 SLR 121

In this case, the Defendants (D) appointed the Plaintiffs (P) as their sub-contractors to lift and position a number of concrete viaduct beams. It was a term in Defendants' letter of award that P was required to provide insurance for their "beam, all equipments, machineries and personnel" ("the insurance clause"). During lifting operations, damage was caused to the boom and the main body of P's crane due to the subsidence of the ground under the crane. P was compensated by their insurers who became subrogated to P's rights against D. P commenced an action against D for the sum of \$1,019,291.00 based on negligence and/or breach and repudiation of contract. One of the defences raised by D was that by reason of the insurance clause in the contract, P was not entitled to pursue their claim against D. The parties sought a preliminary ruling of law by the Court on the meaning and effect of the insurance clause. For this purpose, it was assumed that D had not adequately prepared, compacted and levelled the ground and was thereby liable for the subsidence of the ground and accordingly was in breach of contract.

The Court (per Selvam J.) held that on the assumption that D were in breach of contract and had caused the damage to the crane, the insurance requirement in the contract disentitled P (and their insurers) from proceeding against D for the alleged breach of contract. The obligation to procure insurance in respect of the crane and beam was an integral term of the contract. This was one of the items for which D had paid the consideration of \$48,000. The premium for the insurance to be secured by P was included in the total consideration paid by D. The insurance clause was not for the benefit of P alone but for D as well. It further held that the intention of the parties in providing

for the insurance clause was that in the event of damage to the crane, P would recover his loss from the insurance moneys and in that event there would be no further claim against D. The insurance clause did not seek to exempt D from liability but stated how the parties agreed to deal with such liability. In coming to its decision the Court relied upon the following cases :*Greenwood Shopping Plaza Ltd v. Neil J. Buchanan Ltd* (1980) 99 DLR (3d) 289, *Eaton Co Ltd v. Smith* (1977) 92 DLR (3d) 425 and *Mark Rowlands Ltd v. Berni Inns Ltd* [1986] QB 211) where the courts had to construe the effect of a similar insurance clause in lease agreements in which either the lessor or lessee covenanted to insure the premises against fire and other risks. The Court however distinguished the case from cases where the insurance clause is a contract at large.

EDITORIAL COMMENT

The Plaintiffs have appealed against the Court's decision to the Court of Appeal. In the light of the above decision and pending the outcome of the appeal, it would appear that the inclusion of a similar insurance clause in a contract would effectively prevent the party (or his insurers) whose equipment or property was damaged from claiming against the other party notwithstanding that the other party may be liable for the loss. This assumes payment of the insurance monies by the insurers. However, on the above decision, the innocent party would still be able to claim against the other party for loss of profits, prolongation costs, consequential losses and all other losses not covered under the insurance policy since the insurance clause is not intended to serve as an exclusion clause under the contract. In the situation where the insurance company repudiates liability under the policy and the innocent party is unable to recover the insurance moneys, would he still be entitled to pursue his claim against the other party? The key to the interpretation of the insurance clause is to determine whether the clause was intended to benefit one or both the contracting parties. If it was for the benefit of both the parties, then it would appear this clause would preclude a claim against the other party for damages to equipment or property after compensation has been received from the insurance company under the policy. Accordingly, it may be prudent to draft an insurance clause to specifically provide for the parties' intention rather than let the Court decide what was the intention of the parties under the contract.

Conference Announcements - Call for Papers

We have received the following notices/announcements by e-mail over the internet from the organisers:

W55 7th International Symposium on Building Economics, Zagreb, Croatia, 4-8 September 1996

Abstracts are called for before April 1995 to the CIB W55 7th International Symposium on Building Economics, Zagreb, Croatia, 4-8 September 1996 organized by Faculty of Civil Engineering, University of Zagreb Department of Construction Management Fax: +385 1416 621

For more information you may contact the Coordinator of CIB W55, Mr. Dan Ove Pedersen, Denmark, E-mail: <dop@sbi.dk>

Title of the 7th International Symposium is:

Economic Management of Innovation, Productivity and Quality in Construction

The subject areas are:

Building Economic Methods
Evaluation Methods in Construction
Design Economics
Building Cycles and the Construction Industry
Building Market Forecasting
Environmental Economics of Construction
International Building Market
Central Europe Construction Industry and Investment Strategies
Management of Construction in Transition Economics

Catalyst '95, The Design & Environment Conference

Rethinking the Built Environment

Where: Faculty of Environmental Design, University of Canberra, Belconnen, ACT, Australia, 2616
When: 13-16 July 1995

Content:

There are two fundamental areas to be addressed by this conference:

(a) Ecological impacts of design.

The built environment is a significant contributor to the consumption of resources and production of waste products. The selection of appropriate construction materials, methods, processes and products at the design stage can reduce the adverse impacts of development on the natural environment. Papers and case studies are invited which address practical approaches to benign products and building design.

(b) Social impacts of design.

There is a growing wealth of literature on environmental design as a technical problem. However, little attention has been paid to the relationship between the design of the built environment and social transformation. Papers are invited which explore how environmental design shapes the relationships between, and attitudes towards, humans, the community and the natural environment.

Objectives

The conference will create the opportunity to generate action groups and networks to focus on various aspects of redesigning the built environment.

Publication

The conference papers will be published to fill a significant gap in the literature concerning social change and sustainable development. In addition, some of these papers will be selected for publication in a book to be edited by the Faculty.

Final papers should be submitted by August 31, 1995 to be considered for publication. The address for submission of the abstract is:

Att: Dr. Janis Birkeland

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Readers with any questions or comments on the contents of this issue are welcomed to write to us or send us an e-mail to our internet address at chantan@singnet.com.sg