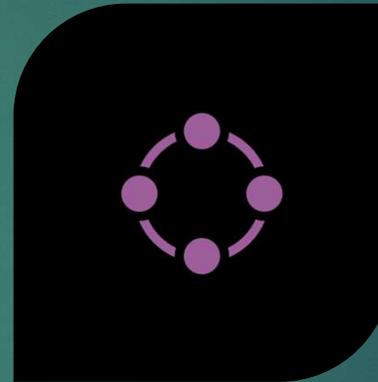


EXTENSION OF TIME AND VARIATION CLAUSES IN CONSTRUCTION CONTRACTS

Nature of the Contract



TIME IS THE ESSENCE OF
THE CONTRACT



TIME IS AT LARGE IN THE
CONTRACT

Time is “of the essence”

“a failure to perform by the stipulated time will entitle the innocent party to

(a) terminate performance of the contract and thereby put an end to all the primary obligations of both parties remaining unperformed; and

(b) claim damages from the contract-breaker on the basis that he has committed a fundamental breach of the contract (a breach going to the root of the contract) depriving the innocent party of the benefit of the contract (damages for loss of the whole transaction).”

Time is “at large”

No specified date within which the contracted work will be completed.

However, it does not mean that parties cannot fix a reasonable period of time within which the work shall be completed.

A stipulation leading to time being at large may arise when unexpectedly the employer has run short of funds and cannot foresee as to when the financial stringency is likely to ease. In such a case, the work will move at a snail's pace and both the parties are not aware as to when the work under the contract shall approach the completion date.

When time is at large, no liquidated damages can be deducted because there is no fixed date from which liquidated damages can be determined. In fact, in such a situation, it becomes an open-ended contract.

When time cannot be “at large”

(1) Actions by the employer which are perfectly legitimate under a construction contract may still be characterized as prevention, if those actions cause delay beyond the contractual completion date.

(2) Act of prevention by an employer do not set time at large if the contract provides for extension of time in respect of those events

(3) Insofar as the extension of time clause is ambiguous, it should be construed in favour of the contractor.

Types of delay in a project

01

Causative and Non-causative delays

02

Fundamental/Critical and Ancilliary/Non-Critical delays

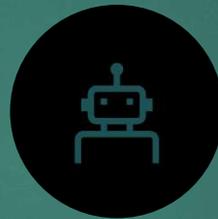
03

Consequential and concurrent delays

Effects of delay



Prevention from doing the work
(Results in idling of resources)



Disruption in doing the work (Affected efficiency)



Loss of Profit



Loss of interest

Elements to satisfy for entitlement of EOT



In order to determine whether an entitlement to an extension of time exists, it is necessary to establish that:



the cause of the delay (if caused by the employer) was non-excusable, under the terms of the contract; and also,



as a consequence, there was a delay to the date for completion.

Major events of delay considered in construction clauses?



DELAY ATTRIBUTABLE TO THE
AUTHORITY

=

CAN CLAIM DAMAGES



DELAY ATTRIBUTABLE TO THE
CONTRACTOR

=

CANNOT CLAIM DAMAGES



FORCE MAJEURE EVENTS
(NO CONTROL)

=

CANNOT CLAIM DAMAGES

What if the contract bars the contractor from claiming damages?



If the contractor repudiates the contract exercising his right to do so under Section 55 of the Contract Act



The employer makes it clear that escalation of rates or compensation for delay would be permissible,



The contractor gives notice regarding continuance of performance of work despite facing losses and that it would be seeking compensation

ESSENTIALS OF AN EOT REQUEST/NOTICE

The contractor has to give notice if the works are being delayed or are likely to be delayed.

The notice should be accompanied or be followed as soon as practicable by particulars of expected effects of an estimate of the expected delays.

Details of the least initially envisaged is that the architect will carry out a prospective exercise;

Once the notice, particulars and estimates are given, the architect is required to grant the appropriate extension of time.

Variation Clause



Firstly, they give the owner the power to require a variation of the work unilaterally and as of right, as opposed to relying on the willingness of the contractor to agree to the variation which would otherwise enable the contractor to exert unacceptable pricing on the owner.



Secondly, an architect has no implied authority to contract on behalf of his employer.



A third and subsidiary reason for variation clauses is that they enable the parties to agree in advance on the basis for valuing and pricing the varied work.



Thank you



Stay Safe