

Court of Appeal confirms the conventional operation of extension of time provisions

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The Court of Appeal in *Carillion Construction Limited v EMCOR Engineering Services Limited* [2017] EWCA Civ 65 has confirmed that the industry-wide practice of awarding extensions of time running contiguously from the previous date for completion is the correct approach, including where the delay event occurred after the date for completion. White & Case acted for EMCOR, the successful respondent.

In a unanimous decision that provides welcome certainty to the construction industry, the Court of Appeal has confirmed that extensions of time awarded under a standard form of domestic sub-contract, widely used throughout the UK construction market, must start on what was previously the date for completion. This is so regardless of when the delay occurred in relation to the date for completion and whether doing so may produce a potentially odd result from a commercial perspective.

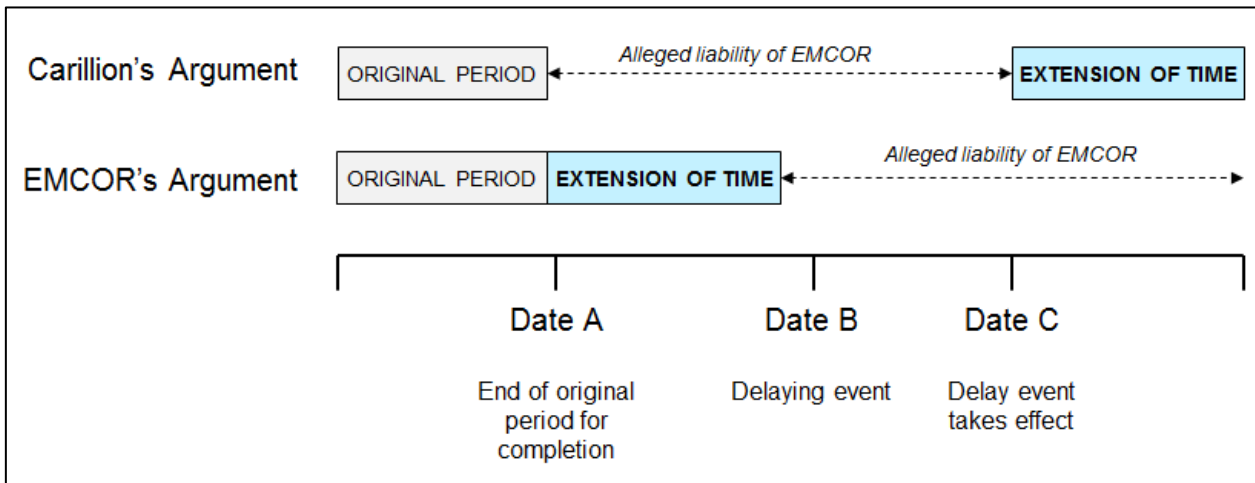
The dispute concerned the construction and fit-out of the Rolls Building in Fetter Lane, London, which houses the Commercial Court, the Chancery Division and the Technology and Construction Court. The fit-out works were completed late and Carillion, the main contractor, alleged that its consultants and sub-contractors (including EMCOR) were responsible for different delays over different time periods.

EMCOR contended that it was entitled to receive an extension of time for variation works that were instructed after the original date for practical completion had passed and therefore the original period in which EMCOR was obliged to complete its sub-contract works should be extended. Carillion argued that the wording of the sub-contract permitted it to award an extension of time that covered only the distinct and disjointed periods that corresponded with the actual time when EMCOR's sub-contract works were being delayed by the variation works. Carillion submitted that its interpretation was to be preferred as a matter of commercial common sense, in order to avoid the "oddity" of a sub-contractor being exempted from liability during a period when it might actually be in culpable delay, only to subsequently be made liable to the contractor for loss and expense during a period in which the sub-contractor was not actually in culpable delay (as demonstrated in the diagram below).

In delivering the lead judgment, Lord Justice Jackson held that the natural meaning of the words in the contract required Carillion to award extensions of time contiguously. Applying the principle established by *Arnold v Britton* and the subsequent line of cases that followed it, the Court held that the circumstances of the case were not so exceptional as to require considerations of commercial common sense to drive the court to depart from the natural meaning of the contractual provisions. The Court also recognised that this was the first reported instance in which a contractor or sub-contractor had argued that awards of time should be non-contiguous.

The Court dismissed Carillion's appeal, holding that the judge at first instance was correct to find that the natural meaning of the words used in the sub-contract was clear and any extension of time should be added contiguously to the pre-existing date for completion of EMCOR's sub-contract works.

This judgment confirms that the standard practice of awarding extensions of time by extending the date for practical completion is the correct approach to take. Even though such an approach may be open to criticism in particular circumstances, it is a practicable and satisfactory system and will continue to be so.



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