

August 2012

## JBCC PRINCIPAL BUILDING AGREEMENT – CLAUSE 29 EXTENSION OF TIME CLAIMS

---

NV PROPERTIES (PTY) LIMITED VS RADON PROJECTS (PTY) LIMITED

---

The Grahamstown High Court delivered a judgment on 17 May 2012 which serves as a reminder that our Courts are strict in requiring claims procedures set out in building contracts to be followed.

### FACTS OF THE CASE

---

Radon Projects ("the contractor") was employed by N V Properties ("the employer") in terms of a JBCC Principal Building Agreement (May 1998 Edition).

Prior to practical completion being reached, the contractor submitted numerous extension of time claims in terms of clause 29.1.

In most instances the principal agent failed to adjudicate the claims, or otherwise rejected them.

Clause 40 of the 1998 edition of the JBCC Agreement provides that a disagreement between the employer and contractor must be determined by the principal agent within 10 working days of a request. Such decision is final and binding on the parties unless a further dispute notice is given within 20 working days. (This is similar to the provisions of clause 58 of the General Conditions of Contract for Construction Works issued by the South African Institution of Civil Engineering.)

The contractor failed to give the required notice to challenge the principal agent's decisions in terms of clause 40 in relation to the disputed claims which had been referred to him.

The employer argued that the principal agent's decisions were final and therefore there was no arbitral "dispute" between the parties.

#### COMPLIANCE WITH CLAUSE 29

---

This issue was referred to the Court for decision.

The Court recorded that:

- *"Before a disagreement on the issue of time delays can arise, the party seeking an extension of time must comply with clause 29."*
- The purpose of the time bar set out in clause 29 was introduced to counter the practice which previously prevailed where claims for extensions of time were only submitted after the intended date for practical completion had already passed and when the contractor was in *"penalty time"*.
- The contractor is obliged to establish as soon as possible whether or not it is entitled to a revision of the practical completion date in order to decide whether to accelerate the works or to face the possibility of paying penalties.

The Court held:

- *"Thus, in respect of those claims wherein the contractor has not complied with clause 29, especially clauses 29.4 and 29.5, the First Respondent has forfeited those claims and there is thus no "arbitral dispute".*

#### WHAT MUST BE DONE

---

1. Where a contractor believes that an event has occurred which will cause a delay to the date of practical completion, it needs to immediately give the principal agent reasonable and timeous notice of the circumstances giving rise to the delay (clause 29.4.1).
2. Within 20 working days from the date on which a contractor becomes aware (or ought to become aware) of a potential delay, it must notify the principal agent of its intention to submit a claim for the revision of the date of practical completion (clause 29.4.3).
3. Once the delay has ceased the contractor must, within 40 working days, quantify its claim and submit the details to the principal agent (clause 29.5).
4. Where the contractor fails to adhere to any of these provisions, the claim will be unenforceable..

#### FURTHER ADVICE

---

Should you require further advice or assistance, please contact Alastair Hay - 031 536 8508 / [ahay@coxyeats.co.za](mailto:ahay@coxyeats.co.za), Richard Hoal on 031 536 8511 / [rhoal@coxyeats.co.za](mailto:rhoal@coxyeats.co.za), Peter Barnard on 031 536 8514 / [pbarnard@coxyeats.co.za](mailto:pbarnard@coxyeats.co.za) or Vuyo Mkwibiso on 031 536 8523 / [vmkwibiso@coxyeats.co.za](mailto:vmkwibiso@coxyeats.co.za).