**The effects of Covid-19:JCT Standard Form Construction Contracts:**

It is clear that on Monday 23rd March 2020 the government has brought in measures requiring social distancing and preventing unnecessary travels (including to work where applicable) in order to slow the spread of Covid-19 thereby allowing the NHS to fully cope, or at least be in a better position to cope.

To this end no doubt there will be a reduced labour force, with those attending risking their own safety to do so, reluctantly. There are arguments surrounding whether these restrictions are completely mandatory in nature.

There are arguments to support that these measures are not completely mandatory in its strictest sense to date. There are those, however that would argue to the contrary

 As a result I have dealt with this position later in this article.

We see most recent tales of major Contractors closing site, including Galliford Try, Hill, Engie and Lendlease so it is with merits that I say many more Contractors and subcontractors is likely to follow suit.

Therefore, no doubt, the most prominent question in the Construction Industry (and by those who are currently on-site and others with imminent construction contracts obligations) will no doubt be ascertaining and perhaps seeking to secure or in many instances preserve their contractual position in respect of delays or suspensions due to Covid-19 and to fully ascertain whether the pandemic of Covid-19, is indeed a force majeure event which could give them the right to suspend or in instances, where necessary,  terminate.

I will interpret what I understand the position would be under the JCT forms of contract.

However bearing in mind that these JCT contracts are sometimes amended with bespoke clauses negotiated and added so perhaps all Contractor's situation would not squarely fit in my current interpretation. What this means is that there will be the need for all Contractors  to take the appropriate legal advice before seeking to exercise any perceived contractual rights going forward.

The JCT 2016 standard Form Contracts.

In the JCT 2016 Design & Build standard form Contract (the JCT) force majeure is classified as a Relevant Event for which a Contactor, by showing that the works were delayed as a result of such event, can claim and be entitled to extension of time. It is however worth noting, that force majeure is not a Relevant Matter under the JCT and would therefore not entitle a Contractor to make any claims for loss and expense.

What is the effect of a force majeure event?  A force majeure clause operates to  relieves parties to a contract from their contractual obligations under certain extreme circumstances.

We will all be aware that there is no definition of 'force majeure' in the standard form Contracts or under English law and therefore the rules that apply will more likely be those which are agreed within the contract. With contractual interpretation playing an important role.

Certainly it will mean that for  a Contractor to invoke force majeure it will depend on the way the clause is drafted and the individual circumstances. My recommendation therefore is to seek individual legal advice here as well .

In addition, as events such war, strikes, fire, weather or a change in law after the base date which directly affects the works, are these are covered separately under the JCT,  these in my opinion would not be included within the interpretation of force majeure.

So where does that leave an en episode of epidemic or a pandemic like the Covid-19 outbreak?

The burden of proving force majeure, will fall on the Contractor as he is the party that will be seeking to rely on it. Bear in mind as well that the Contractor will also need to prove that such event has caused delays or the works to be suspended.

Nonetheless, and perhaps it is likely that a judge or adjudicator may be inclined in these extreme circumstances, to empathise or apply equity, as far as is reasonable to do so, in favour a contractor seeking to rely on force majeure.  However, please be mindful that  there has been no such case at present forming any authority to this, and most importantly, each case may turn on it's own facts and circumstances and in particular current circumstances.

Contractors are required to and must use best endeavours to prevent the delays and either party is able to terminate the Contract if the works have been wholly or partly suspended as a result for a certain period of time which, in the JCT standard form is usually  a two (2) month period.

Would the case be more clear cut if there was a mandatory restrictions on peoples movements so as to include mandatory shut down of all place of work and all construction sites?

My thoughts are that the answer to this would be yes! If this were to be the case, and such mandatory restriction causes delays to works then this would fall under the Relevant Event of a change of law, thereby invoking an extension of time.

I must clarify that this would still not constitute a Relevant Matter and as a result the Contactor would not be entitled to loss and expense.

Again, a Contractor must use its best endeavours to prevent the delays. In addition as before, either party is able to terminate the Contract if the works have been wholly or partly suspended for two (2) months, as within the standard form.

I must however point out that this two (2) month provision may have been negotiated and amended in the Contract Particulars. Therefore it is very important that a Party review their individual contracts and take legal advice regarding this.

What is the position if the Employer/Client instructs the Contractor to close the site or to postpone or suspend works?

If, this is the case then such instruction will be a Relevant Event and a Relevant Matter thereby entitling a Contractor to both an extension of time and loss and expenses.

Jeniffer Campbell

12 Oldsquare Chambers.