

Construction Law Update

No Greater Liability Clauses and Collateral Warranties – When Does Limitation Expire?

Generally, claims brought outside the relevant limitation period will not be entertained by the courts. It is crucial therefore that parties know the date by which they must bring a claim. In the recent case of Swansea Stadium Management Company Ltd v City & County of Swansea (1) Interserve Construction Limited (2), the court considered the limitation period for claims under a collateral warranty and the effect of a ‘no greater liability’ provision.

Background

In 2004, and by contract executed as a deed, City and County of Swansea (“CCS”) engaged Interserve Construction Ltd (“ICL”) to design and construct the Liberty Stadium in Swansea. On 1 April 2005, the Employer’s Agent wrote to ICL stating that the Works had reached Practical Completion as at 31 March 2005. CCS then leased the stadium to Swansea Stadium Management Company Ltd (“SSMC”) and ICL provided a collateral warranty in favour of SSMC.

On 4 April 2017 SSMC issued a claim form alleging defects in the concourse floor and the construction and painting of steelwork. ICL sought to have SSMC’s claims under the main contract struck out on the basis that they were brought more than 12 years after the date of practical completion i.e. they were time barred.

What was the effect of the collateral warranty?

The collateral warranty did not include an express commencement or expiry date but it did require ICL to maintain professional indemnity insurance for at least 12 years from the date of practical completion. It also provided that ICL would have no greater liability under the collateral warranty than it would have had if SSMC had been named as a joint employer with CCS under the main contract.

The court held that the purpose of the warranty was to put SSMC in the same position as CCS under the main contract. ICL’s liability to SSMC was intended to be the

same as its liability to CCS under the main contract and that included the period of limitation. The court held that the collateral warranty had retrospective effect and applied from the date of practical completion. As such, the limitation period also began running from the date of practical completion.

When was practical completion achieved?

As the main contract and collateral warranty were executed as deeds, SSMC had 12 years from the date of practical completion to bring a claim against ICL for losses arising from the main contract works.

SSMC argued that practical completion had not been achieved by 31 March 2005 because Interserve was still working on site and there were patent defects in the works. The court disagreed and held that under the terms of the main contract, practical completion was not judged by an objective standard but on the reasonable opinion of the Employer. The notice from the Employer’s Agent stating that Practical Completion had been achieved on 31 March 2005 was therefore conclusive and the claims brought by SSMC for breaches of the Collateral Warranty were time barred.

Analysis

This case confirms that a ‘no greater liability’ provision limiting liability under a collateral warranty to the same level of liability under the main contract applies as much to the limitation period as it does to the financial value of the claim. Parties should not therefore assume that the limitation period for a claim under a collateral warranty automatically runs from the date of the warranty and should carefully consider its wording.

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