

Lendlease v Aecom – a pencil sketch

April 3, 2024 Robert Blackett

PRACTICES Litigation, International Arbitration

*Simple? Yet, not a single person on the face of this earth knows how to make me.
I, Pencil Leonard E. Read (1958)*

Introduction

Lendlease Construction (Europe) Ltd v Aecom Ltd (Rev1) [2023] EWHC 2620 (TCC) is a first instance decision arising out of a £173 million project to design and build a new oncology centre at St James' University Hospital in Leeds. Work began in 2004 with practical completion certified in 2007. Disputes later arose between employer and contractor about fire safety and electrical engineering defects in a basement plant room. The contractor agreed to pay £2.9 million in respect of some defects. Others remained in issue and were the subject of a judgment of Joanna Smith J in *St James's Oncology SPC Ltd v Lendlease Construction (Europe) Ltd & Ors* [2022] EWHC 2504 (TCC) with the contractor ordered to pay the employer around a further £5 million.

The contractor next sought to pass on these liabilities to the subcontractor said to have been responsible. This raised (amongst other things) questions about the extent to which the subcontractor was entitled to dispute what had been agreed in the settlement, and to relitigate the issues which had been before the previous judge. While the detail of the judgment is mostly of interest only to the parties involved, it does offer a useful exploration of the law around this issue of when and to what extent a settlement or dispute resolution process should bind a non-party and illustrates some pitfalls contractors face in this situation.

In the event, while the contractor would have been entitled to rely on the judgment and settlement to prove its loss as against the subcontractor (as discussed further below), the contractor was ultimately unsuccessful because its claims against the subcontractor were time-barred, having been commenced more than six years after the breach, and because the contractor had agreed a settlement with the subcontractor in connection with another matter but which was worded in such a way as to have also settled the defects claim.

When a party seeks to pass on liability to a third party, background principles which underpin our system of dispute resolution pull in different directions. There is the desire to resolve disputes quickly and cheaply and avoid relitigating the same issues. There is the desire to demonstrate procedural fairness, and give parties facing claims the right to present fresh arguments and test the evidence against them. And then there is the need to respect whatever choices the parties may themselves made about how their disputes are to be resolved.

[Read the full article.](#)