

Housebuilder Top Tip - Terminating a construction contract - establishing the grounds, communicating clearly and practical realities

Published 3 December 2019

Terminating a construction contract - establishing the grounds, communicating clearly and practical realities

Construction contracts normally prescribe the various methods of termination and requisite grounds upon which a party can terminate its engagement under the contract. It is imperative that these grounds correctly reflect the intention of both parties. It is also crucial for the terminating party's intentions to be communicated in a manner which clearly states the party's intentions to terminate the contract.

The party intending to terminate a contract must ensure that in doing so, it is relying on a clear right and that this is communicated to the other party in a straightforward and direct manner so as not to leave doubt in anyone's mind as to what is happening. In the case of termination (especially in the Construction industry), there should be no room left for misinterpretation.

When considering whether to enforce the termination rights, it is important to consider the practical consequences in doing so. These may include the following:

- Can the work be done by an alternative contractor and how smoothly can the work be handed over?
- What happens to the sub-contractors engaged in the project? If any collateral warranties have been given in favour of the terminating party, could step-in rights in those be exercised to maintain continuity of the works?
- How will the termination affect the relationship between the parties and could it have impact on other projects? This could be especially important for developers who may be relying on the same supply chain to work on different projects.
- What happens with any ancillary issues, for example project/works insurance or outstanding collateral warranties?
- What losses can/can't be recovered by the terminating party? Those could include costs associated with the delay to the progress of the works and any additional expenses resulting from having to source and engage an alternative.
- In the event that the termination is challenged, is there a clear paper trail/evidence relating to the alleged breaches?

To summarise, termination is a useful tool and often offers the innocent party a way to walk away from a contract and preserve its commercial position. However, care should be taken when deciding on such course of action to ensure that there are clear grounds allowing it and if so, that the terminating party's decision is communicated in a way that leaves no doubt as to what is happening (together with the corresponding consequences).

Authors



Dawid Stramski

Newcastle

dstramski@dacbeachcroft.com