

FES Ltd v HFD Construction Group Ltd

Case Ref No: CA72/23

Date of Hearing: Friday 20 September 2024 at 10.30 (1 day)

Division and Senators: First Division (Lord President, Lady Wise, Lord Beckett)

Livestreamed Hearing?: Yes No

Agents and Counsel:

Agents / Counsel for the Reclaimers (the appellants) (FES Ltd):

Brodies LLP

Gavin MacColl KC

Agents / Counsel for the Respondents (HFD Construction Group Ltd):

Dentons UK and Middle East LLP

Paul O'Brien KC

Link to Judgment Appealed:

[2024csoh20-fes-limited-against-hfd-construction-group-limited.pdf](#)

[\(scotcourts.gov.uk\)](#)

Case Description:

In 2020, HFD Construction entered into a contract with FES Ltd, in terms of which FES Ltd agreed to complete a fit out of a new Grade A office building at 177 Bothwell Street, Glasgow. The contract took the form of the Standard Building Contract with Quantities for use in Scotland (SBC/Q/Scot) (2016 Edition), with some amendments.

During the project, the construction work was delayed for various reasons, including site closures due to the COVID-19 pandemic. Clause 4.20.1 of the contract provided that FES Ltd could recover loss and expense for certain delays encountered during the contract works, subject to compliance with clause 4.21. Clause 4.21 contained notice provisions.

FES wished to claim for loss and expense under clause 4.20.1, but had not complied with the notice provisions. HFD contended that this meant that FES was not entitled to claim. FES referred the dispute to adjudication.

An adjudicator issued his decision on 10 March 2023. He agreed with HFD's argument. He found that the giving of notice under clause 4.21.1 was a condition precedent (a prerequisite) of an entitlement to claim for loss and expense under clause 4.20.1. Since FES had not given the required notice, they had no entitlement to claim.

FES raised the present action, in which they contend that the adjudicator erred in his interpretation of clauses 4.20 and 4.21. They seek a declaration by the court that the notice provisions in clause 4.20 are not conditions precedent to their entitlement to reimbursement for direct loss and expense. They seek a second

declaration that, since it is based on an error of law, the adjudicator's decision, insofar as it rules out FES's right to claim, is not binding on the parties.

Following a legal debate, the commercial judge determined the adjudicator's decision was correct, and dismissed the action. FES Ltd appeals that decision. The First Division will hear the appeal on Friday 20 September 2024.