

Wembley related litigation rolls on...Clauses which survive the Works

Brookfield Construction (UK) Ltd v (1) Foster & Partners Ltd (2) HOK Sport Ltd [2009] EWHC 307. The claimant, Brookfield Construction (UK) Ltd (“Brookfield”) (formerly Multiplex) sought a declaration as to the validity and effect of a particular aspect of a contract with the defendants Foster & Partners Ltd and HOK Sport Ltd, who together constituted a consortium called World Stadium Team (“WST”) responsible for providing architectural services. Brookfield’s claim for declarations arose in the context of a delay claim worth in excess of £250 million against Mott MacDonald. Mott MacDonald submitted that the defendants might have been partly responsible for delays and Brookfield sought to use a clause in the contract to obtain relevant information from WST in order to test the validity of Mott Macdonald’s responses.

The court had to consider whether the obligation which required WST to provide information on its Services survived completion of those Services. In contrast to standard forms of building and engineering contracts which contain obligations on the part of the contractor or consultant to provide information, the particular clause before the court promised access to personnel as well as access to documents for ‘review’. The judge held that as a matter of construction, because the particular provision used the word ‘review’, which implied a look back at something in order to examine it critically, the obligation on WST did not cease when the Services were completed. The judge granted the declarations as sought by Brookfield.