

Book review

Remedies in Construction Law

Roger ter Haar assisted by Camilla ter Haar. Informa Law, London, UK, 2010, ISBN 978-1-84311-826-8, £290, 414 pp.

The authors clearly define the limits and scope of the book from the outset, recognising that the meanings of the key words in the title – ‘remedies’ and ‘construction law’ – are open to different interpretation and debate. This clear definition of the very first words of the book is an early indicator of the approach taken throughout, which is a careful, focused, succinct exposition of a wide-ranging topic.

Construction law is understood in the broad sense of the general law as it is applied to construction, rather than just to that law which is specific to the construction industry, such as statutory adjudication, or the law which has developed in relation to particular forms of standard construction contract. The remedies covered include those which can be obtained by court judgements, such as damages and specific performance, as well as some ‘self-help’ remedies, such as termination, but the authors do not attempt a comprehensive coverage of all remedies that might be relevant to construction projects. For example, they do not include damages for death or personal injury; nor do they deal in depth with consumer contracts – choosing to concentrate on the problems that arise out of commercial construction projects. The book confines itself primarily to English law. These decisions to exclude or limit discussion on some topics are sensible, helping to keep the book to a modest and manageable length of around 400 pages.

There are 25 chapters, but each one relatively short with most chapters less than 20 pages. After a very brief Introduction, the following topics are covered

- 2 Rectification
- 3 Rescission
- 4 Specific Remedies Under Contract
- 5 Quantum Meruit
- 6 Termination
- 7 Frustration
- 8 Damages for Breach of Contract: The Rule in *Hadley v. Baxendale*
- 9 Damages for Breach of Contract: Measure of Damages
- 10 The ‘Black Hole’ Cases
- 11 Damages for Breach of Contract: Some Other General Principles
- 12 Damages in Tort
- 13 Recovery of Loss of Profits and Overheads or Management Costs
- 14 Liquidated Damages and Extension of Time
- 15 Recovery of Damages and Costs
- 16 The Problem of ‘Global’ Claims
- 17 Claims Under the Civil Liability (Contribution) Act 1978
- 18 Claiming Finance Costs and Interest
- 19 Set Off and Abatement
- 20 Provisions Excluding or Limiting Liability
- 21 Injunctions
- 22 Specific Performance
- 23 Declarations

- 24 Limitation
- 25 Dispute Resolution

The content of the book is largely self-explanatory from the chapter headings, except perhaps the chapter on ‘black hole’ cases. These, for those unfamiliar with the concept of black holes in a legal rather than astronomical sense, are those cases where a claim for damages disappears ‘down a black hole’ because the loss has been suffered by a third party not privy to the contract, even though that third party might be very closely related to one of the parties to the contract which has been breached. The authors describe, in a style typical of the book – brief, concise but lucid – the development of this area of the law, with selected extracts from the key judgements; starting with the maritime cases of *Dunlop v. Lambert* (1839) and *The Albazero* [1977], then touching on *St Martins Property Corporation Ltd v. Sir Robert McAlpine Ltd* [1994] before outlining the outcome of *Alfred McAlpine Construction Limited v. Panatown Limited* [2001], both disputes arising from construction contracts. As might be expected from the title of the book, there is a particular focus on topics of interest to those involved in construction disputes – evident from the chapters on recovery of loss of profits and overheads or management costs; liquidated damages and extension of time; the problem of ‘global’ claims; and set off and abatement. The chapter on Limitation provides an essential reminder that legal remedies can be lost if proceedings are not commenced within the time periods allowed by statute, and the chapter on dispute resolution offers a useful guide to the various methods available for seeking the remedy or other acceptable solution to the matter in dispute.

It is possible to dip in to any one of the chapters as required, or interest demands. The general approach of the book is to explain the common law principles in relation to each of the chapter topics, followed, where appropriate, by consideration of remedies commonly included within contractual provisions, relevant statutory provisions and commentary on arbitrator and adjudicator powers in relation to the various remedies. There is extensive use of hundreds of case references to explain key points and legal principles, with cleverly selected quotations from judgements and useful footnotes to amplify the explanations. The concise coverage of the topics is supplemented with references to books providing more detailed analysis on such matters as principles of interpretation and the law of restitution. The authors have clearly read very widely and distilled their extensive knowledge for the benefit of their readers. This is a most useful, readable and highly recommended book for anyone involved or interested in construction law and the remedies available in the event that things go wrong.

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REFERENCES

- Alfred McAlpine Construction Limited v. Panatown Limited* [2001] 1 AC 518.
Dunlop v. Lambert (1839) 7ER 824.
St Martins Property Corporation Ltd v. Sir Robert McAlpine Ltd [1994] 1 AC 85.
The Albazero [1977] AC 774.