



Summary of principles from recent NEC cases

September 2018

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As a market leading construction team with extensive experience in the NEC suite, Hogan Lovells has prepared a summary of principles from recent case law on NEC that may impact upon the construction industry. We hope that you will find it useful.

Arcadis UK Ltd v May and Baker Ltd (t/a Sanofi) [2013] EWHC 87 (TCC)

NEC3 Engineering and Construction Contract

Where two adjudications between the same parties were on very similar issues, the second adjudicator can have regard to the first adjudicator's decision.

J Murphy & Sons Ltd v W Maher and Sons Ltd [2016] EWHC 1148 (TCC)

NEC3 Engineering and Construction Contract

The words "any dispute arising under or in connection with this subcontract" (in Option W2 of the NEC3 Conditions) are broad enough to cover a dispute arising under the alleged settlement agreement.

*Fiona Trust*¹ principles applied, meaning that even when parties to a construction contract had reached a full and final settlement in relation to the final account, these disputes could be referred to adjudication.

Universal Piling & Construction Ltd v VG Clements Ltd [2016] EWHC 3321 (TCC)

NEC3 Engineering and Construction Short Contract

Under Clause 50, which incorporated the NEC short form contract NEC3 ECSC, when read with clause 10.1, the sub-contractor has the obligation to make payment applications, but such applications or their assessments are not conclusive as to the value of the work carried out.

Anglia Water Services Ltd v Laing O'Rourke Utilities Ltd [2010] EWHC 1529 (TCC)

NEC2 Engineering and Construction Contract

Clause 93.1 of an NEC2 ECC, which provided for mandatory adjudication before referral for arbitration, did not fetter the right to refer the dispute to adjudication at any time but did fetter the right to commence arbitration at any time.

SGL Carbon Fibres Ltd v RBG Ltd [2012] ScotCS CSOH 19

NEC3 Engineering and Construction Contract

The onus of proof lay on the employers to a building contract in an arbitration when the employer was seeking to recover alleged overpayments made under an NEC3 ECC.

RWE Npower Renewables Ltd v J N Bentley Ltd [2013] EWHC 978 (TCC)

NEC3 Engineering and Construction Contract

Courts will look at the whole contract and its documents to determine objectively what a reasonable person with all the background knowledge reasonably available to the parties at the time of the contract would have understood the parties to have meant. A more commercial construction should be adopted.

Mears Ltd v Shoreline Housing Partnership Ltd [2015] EWHC 1396 (TCC)

NEC3 Term Service Contract, Option C

An employer was estopped by convention or representation from recouping alleged overpayments under an NEC3 TSC, Option C (target contract with price list).

¹ *Fiona Trust & Holding Corp v Privalov* [2007] UKHL 40, [2007] 4 All E.R. 951.

SSE Generation Ltd v Hochtief Solutions AG and another [2015] CSOH 92

NEC2 Engineering and Construction Contract

A provision for joint names construction all risks (CAR) insurance does not displace the parties' liability under an NEC2 ECC.

Costain Ltd v Tarmac Holdings Ltd [2017] EWHC 319 (TCC)

NEC3 Framework Contract, NEC3 Supply Short Contract

The term of mutual trust and co-operation suggests that, whilst the parties can maintain their legitimate commercial interests, they must behave so that their words and deeds are "honest, fair and reasonable, and not attempts to improperly exploit" the other party. This obligation would go further than the negative obligation not to do or say anything that might mislead and would extend to a positive obligation on the part of a party to correct a false assumption obviously being made by the other.

Northern Ireland Housing Executive v Healthy Buildings (Ireland) Ltd [2017] NIQB 43

NEC3 Professional Services Contract

The assessment of the effect of the compensation event should be calculated by reference to the actual cost incurred by the consultant rather than its forecast cost.

Imperial Chemical Industries Ltd v Merit Merrell Technology Ltd [2017] EWHC 1763 (TCC)

NEC3 Engineering and Construction Contract

Termination under the contractual provisions of NEC3 ECC did not have the same effect as acceptance of a repudiatory breach.

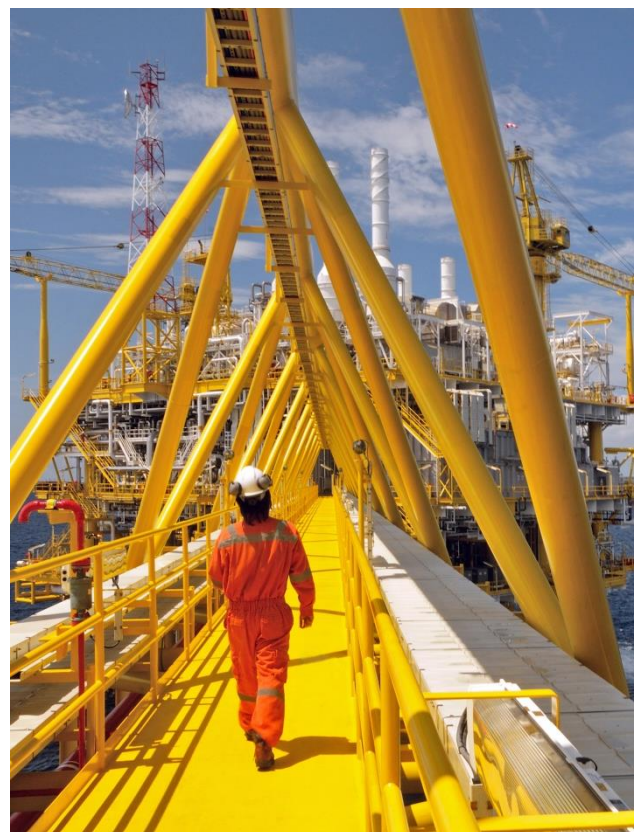
Where the parties contracted on the basis that the project manager would be independent from the parties, replacing the project manager with

an employee of the employer's parent company was invalid.

Imperial Chemical Industries Ltd v Merit Merrell Technology Ltd [2018] EWHC 1577 (TCC)

NEC3 Engineering and Construction Contract

The project manager's assessments of compensation events under the NEC3 ECC can be reviewed. The court was not bound by earlier assessments, although the basis upon which those assessments were made carry "powerful evidential weight."



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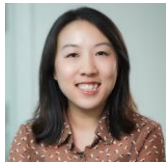
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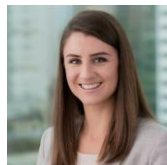
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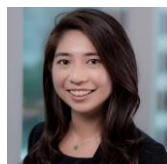
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