Case No: HT-2016-000280

Neutral Citation Number: [2017] EWHC 2196 (TCC)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/08/2017

Before:

MRS JUSTICE O'FARRELL DBE

- -

Between:

VINCI CONSTRUCTION UK LIMITED	**Claimant**
- and -	
BEUMER GROUP UK LIMITED	**Defendant**

- -
- -

Christopher Lewis QC (instructed by **Fenwick Elliott LLP**) for the **Claimant**
David Sears QC (instructed by **Silver Shemmings LLP**) for the **Defendant**

Hearing dates: 22nd May 2017, 23rd May 2017

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Judgment

Mrs Justice O'Farrell:

1. In about 2011/2012 the claimant ("Vinci") entered into a contract with Gatwick Airport Ltd ("GAL") pursuant to which it undertook to carry out development works at the South Terminal, Gatwick Airport, comprising demolition of the existing pier connecting the terminal to the gates, including existing aircraft stands, design and construction of a new Pier 1, and a new baggage handling system, together with associated airside infrastructure ("the Project").

2. By a subcontract dated 8 November 2012 ("the Subcontract") made between Vinci and the defendant ("Beumer"), Vinci engaged Beumer to carry out the detailed design, manufacture, fabrication, supply, delivery, offloading, installation, testing, commissioning and user training in respect of the baggage handling system works forming part of the Project ("the Subcontract Works").

3. The Subcontract is based on the NEC Engineering and Construction Subcontract, Third Edition, subject to bespoke amendments made by the parties.

4. The Subcontract provides for sectional access to, and completion of, the Subcontract Works, including:

    i) Section 5 – Baggage – Subcontract completion date: 12 May 2015;

    ii) Section 6 – Remaining Works – Subcontract completion date: 27 May 2015.

5. The Subcontract provides for liquidated delay damages to be payable in the event that the sectional completion dates are not achieved.

6. Delays occurred to the works, giving rise to compensation events under the terms of the Subcontract. By a settlement agreement dated 30 October 2014 ("the Settlement Agreement"), the parties agreed to extend the access dates, sectional completion dates and other key dates, including:

    i) Section 5 – Baggage – revised Subcontract completion date: 17 November 2015;

    ii) Section 6 – Remaining Works – revised Subcontract completion date: 14 December 2015.

7. A dispute arose between the parties as to the operation of the sectional completion dates and delay damages provisions in the light of the Settlement Agreement. The dispute was referred to adjudication and on 9 May 2016 the adjudicator, Dr Cyril Chern, produced his decision in which he found that the provisions for delay damages were uncertain, inoperable and unenforceable.

8. On 21 October 2016 Vinci commenced these proceedings, seeking declaratory relief as to the proper construction of the Subcontract. The issue for determination by this court is whether, on a proper construction of the Subcontract, as amended by the Settlement Agreement, the provisions for sectional completion and delay damages are valid, as submitted by Vinci, or unenforceable by reason of uncertainty, as submitted by Beumer.

The Subcontract

9. The terms of the Subcontract are set out in the following documents:

   i) the Agreement dated 8 November 2012;

   ii) the NEC 3 Engineering and Construction Subcontract, Option A, priced subcontract with activity schedule, with Option W2 (Dispute Resolution procedure) and Options X2, X5, X7, X13, X16, X17, Y(UK)3 and Z, all as amended by Schedule 3 to the Agreement;

   iii) Schedules 1 – 12 of the Agreement.

10. Clause 4 of the Agreement is an entire agreement provision.

11. Clause 5 of the Agreement provides as follows:

> "5.1 The Subcontractor shall be deemed to have full knowledge of the provisions of the Main Contract (other than the details of the Contractor's prices referred to therein), and the Contractor shall, if so requested by the Sub-Contractor, provide the Sub-Contractor with a true copy of the Main Contract less such details.
>
> 5.2 Save where the provisions of the Subcontract otherwise require, the Subcontractor shall so design, execute, complete and maintain the Subcontract Works so that no act or omission of his in relation thereto shall constitute, cause or contribute to any breach by the Contractor of any of his obligations under the Main contract and the Subcontractor shall, save as aforesaid, assume and perform hereunder all the obligations and liabilities of the Contractor under the Main Contract in relation to the *subcontract works* …"

12. Clause 20.1 of the Conditions (as amended by clause Z10) provides:

> "The *Subcontractor* Provides the Subcontract Works in accordance with the Subcontract Works Information and any accepted *Subcontractor's proposals* …"

13. The Subcontractor's proposals are defined in clause Z9 as:

> "the *Subcontractor's* proposed design (which differs from the Employer's design as contained in the Works Information) for the following elements of the works:

- Baggage

As more particularly described in paragraphs D.1.12.1.5.3 of the Works Information and upon which the Prices and Completion Date are based."

14. Option X5 provided for sectional completion of the works:

> "In these *conditions of subcontract,* unless stated as the whole of the *subcontract works,* each reference and clause relevant to
>
> - The *subcontract works,*
> - Completion and
> - Subcontract Completion Date
>
> applies, as the case may be, to either the whole of the *subcontract works* or any *section* of the *subcontract works*."

15. Clause 30.1 provides:

> "The *Subcontractor* does not start work on the Site until the first *subcontract access date* and does the work so that Completion is on or before the Subcontract Completion Date."

16. Clause 30.2 provides:

> "The *Contractor* decides the date of Completion. The *Contractor* certifies Completion within one week of Completion."

17. Clause 30.3 (as amended by Schedule 3) provides:

> "The *Subcontractor* shall execute the *subcontract works* regularly and diligently so that the condition stated for each Key Date is met the by Key Date and the *subcontract works* are completed by the Subcontract Completion Date."

18. Clause 31.1 provides:

> "If a programme is not identified in the Subcontract Data, the *Subcontractor* submits a first programme to the *Contractor* for acceptance within the period stated in the Subcontract Data."

19. Clause 31.2 provides:

> "The *Subcontractor* shows on each programme which he submits for acceptance
>
> - the *subcontract starting date, subcontract access dates,* Key Dates and Subcontract Completion Date …"

20. The subcontract access dates are set out in Schedule 4 (the Subcontract Data):

"Part of the Site	Date
Virgin Buildings – Removal of redundant High Risk Carousel, feed conveyor and plough	28 January 2013
Main Works – new Baggage Hall – Grid Lines 10-15	04 April 2014
Main Works – new Baggage hall – Grid Lines 03-10	27 May 2014
Access Stand 11 (This related to disconnection of equipment only)	13 May 2015"

21. A Key Date is defined in clause 11.2 as:

> "the date by which work is to meet the Condition stated. The Key Date is the *key date* stated in the Subcontract Data and the Condition is the *condition* stated in the Subcontract Data unless later changed in accordance with this subcontract."

22. The key dates and conditions to be met are set out in Schedule 4 and include:

> "2.0 ELEVEN WEEKS prior to the Baggage sectional completion date the works forming part of this section shall achieve Completion excepting Airport Operational Readiness trials and attendance on same. Completion will not be achieved until the completion of Airport Operational Readiness trials."

23. The subcontract completion date for each section of the subcontract works is set out in Schedule 4:

"Section	"description	subcontract completion date
1	Design submission A	14 December 2012
2	Design submission B	16 September 2013

3	Temporary Stand Provision	N/A
4	Pier & Airfield	N/A
5	Baggage	12 May 2015
6	Remaining Works	27 May 2015"

24. Schedule 4 states:

> "The *subcontract completion date* for the whole of the *subcontract works* is 27 May 2015."

25. Option X7 sets out the provisions for delay damages:

> "X7.1 The *Subcontractor* pays delay damages at the rate stated in the Subcontract Data from the Subcontract Completion Date for each day until the earlier of
>
> - Completion and
>
> - the date on which the *Contractor* takes over the *subcontract works*."

26. The Delay damages for each section of the subcontract works is set out in Schedule 4:

"Section	Description	Amount per day
1	Design submission A	£19,000 / calendar day
2	Design submission B	£25,000 / calendar day
3	Temporary Stand Provision	N/A
4	Pier & Airfield	N/A
5	Baggage	£22,500 / calendar

		day
6	Remaining Works	£17,000 / calendar day"

27. Clause 35.1 provides:

> "The *Contractor* need not take over the *subcontract works* before the Subcontract Completion Date if it is stated in the Subcontract Data that he is not willing to do so. Otherwise the *Contractor* takes over the *subcontract works* not later than two weeks after Completion."

28. Schedule 4 provides that the Subcontract Works are described in Schedule 12 and all documents referred to therein.

29. The Works Package Content Sheet, which is listed in Schedule 12 as one of the documents comprising the Sub-Contract Works Information, states:

> "The Subcontract Works Information is contained within schedule 12 to the Subcontract Agreement in two parts as follows:
>
> Part a – Package specific Subcontract Works Information detailing the package scope of works and
>
> Part b – Project specific Subcontract Works Information detailing the remaining *Contractors* Works Information (where relevant). Part b includes documents that describe how the *Contractor* should carry out the works and the administration, process and procedures that should be followed. The Subcontractor is reminded that it shall so design, execute, complete and maintain the Subcontract Works and assume and perform hereunder all the obligations and liabilities of the Contractor under the Main Contract in relation to the Subcontract Works.
>
> In summary, the scope of works includes for the detailed design, manufacture, fabrication, supply, delivery, offloading, installation, testing, commissioning and end user training and including:
>
> - Departures baggage equipment and systems, incl. controls and monitoring, Transnorm bends and SEW permanent magnet motors (PMM) for conveyors;
>
> - 2 new Logan baggage sorters with manual coding facilities 108 new baggage make up positions;

- Minimum 2600 position automated bag store including Warehouse Management System;
- SICK Scanner Arrays;
- Baggage Sortation & Distribution;
- Removal of temporary carousels in Stand 11 on completion of new baggage system;
- Removal of redundant baggage equipment from existing baggage hall on completion of new baggage system (Disconnection by *Subcontractor*, removal by *Contractor*);
- Modification of Baggage System including integration of existing system into new prior to Stand 11 building removal;
- Provision of test bags (including HBS test bags) required to complete the required testing and commissioning requirements;
- Provision of baggage labels to enable full system testing & commissioning."

30. The scope of the baggage works is set out in Schedule D.1.12 Appendix B. Section B1 states:

> "The *Subcontractor* shall be entirely responsible for the design, integration, installation, commissioning, testing and handover of all baggage system works associated with this contract and the changes and integration and performance of the existing South Terminal baggage system where modified or impacted under this contract."

31. Section B.12 "Testing and Commissioning" provides that Beumer shall undertake baggage system functional and performance tests in respect of the Subcontract Works and states:

> "The Confidence Trial shall not commence until completion of all Reliability Periods to the satisfaction of the *Contractor*.
>
> Based on a Reliability Period of 20 days the performance requirement level is as follows …"

32. Section B.15 is entitled "Baggage Sectional Completions" and contains two flowcharts:

    i) The first flowchart is entitled *"Break-in Sectional Completion Handover Sequence."* The description above the flowchart states:

"The *Subcontractor* shall provide a programme for acceptance by the *Contractor* based on the Baggage Break-in Sectional Handover Sequence detailed below …"

The sequence shown in the diagram includes:

a) testing and commissioning;

b) operational trials (1 day minimum);

c) "TG5" – handover for beneficial use;

d) reliability trials (20 days minimum);

e) Sectional Completion;

f) TG6 (14 days maximum after sectional completion).

ii) The second flowchart is entitled *"Baggage Sectional Completion - Handover Sequence."* The description above the flowchart states:

"The *Subcontractor* shall provide a programme for acceptance by the *Contractor* based on the Baggage Sectional Completion Handover Sequence detailed below …"

The sequence includes:

a) "TG5" – final section handover for beneficial use;

b) reliability trials (7 days);

c) final sectional completion;

d) whole system confidence trial;

e) TG6 – final section (14 days maximum after final sectional completion);

f) Completion of the whole of the works (30 days minimum after final sectional completion);

g) trials snagging completion;

h) final PA3 Stage 2 handover.

33. Section D.1.12.1 contains a general description of the works, including at D.1.12.1.5.3 "Baggage":

"The *Contractor* shall meet the requirements of the Works Information but the *Employer* accepts that the *Contractor's* proposal for the baggage system is based upon the layouts and solution as detailed in document 11945-CP-00108 included in Schedule K."

34. Vinci's scope of work included at D.1.12.2.1:

> "…
>
> - Decommissioning and removal of the Domestic Arrivals baggage equipment.
>
> - Decommissioning & removal of existing baggage equipment within existing baggage hall & stand 11 building, made redundant by the completion of these works and make areas good.
>
> - Decommissioning and Demolition of Stand 11 building on completion of the main works ..."

35. D.1.12.2.6 provided that Vinci's scope of works included the baggage system as defined in the Works Information, including:

> "…
>
> - Departures baggage equipment and systems …
>
> - Baggage Sortation & Distribution;
>
> - Removal of temporary carousels in Stand 11 on completion of new baggage system;
>
> - Removal of redundant baggage equipment from existing baggage hall on completion of new baggage system;
>
> - Modification of Baggage system including integration of existing system into new prior to Stand 11 building removal;
>
> - Provision of test bags … required to complete the required testing and commissioning requirements …"

36. Section D.1.13.4.13 sets out the following restrictions on Vinci's working:

> "The *Contractor* shall ensure that an equivalent number of make-up positions that have been tested, commissioned and handed over post AOR are available within the new baggage factory prior to the de-commissioning of any baggage make-up positions within the Stand 11 building."

37. The subcontractor proposals in section 7 of Schedule 12 contain details of the systems to be designed and installed, including revised scheme design layout drawings S11945-GA-00105 and S11945-GA-00106.

38. Section B3 contains Beumer's proposals for testing, commissioning and handover at 3.7:

"…Beumer proposes the following sequence to achieve Airport Operational Readiness (AOR)

1. End to End Acceptance Test for the new baggage system (stand alone but fully commissioned)

2. Acceptance and Handover in 2

3. Reliability Period and PA3 part 1

4. Confidence Period

5. PA3 Part 2 …

3.7.3 Reliability and Confidence Trials

Due to the system phasing and the migration of airlines from Stand 11 the intention is to put the system into beneficial use after the third break in to the existing system. During this period BEUMER will be responsible for all maintenance aspects.

The twenty day reliability period will only commence after the fourth and final connection has been completed and tested…

The confidence trial will commence for a thirty day period upon signed off completion of the Reliability period…"

39. The sectional completion criteria for the main contract works (including the Subcontract Works) are set out in section D.1.12.5 and include the following:

"D.1.12.5.5

Section 5: Baggage

To achieve this sectional completion the following deliverables shall be completed:

- All works detailed in the Works Information in the area of the pier building in the shaded areas of drawings 20209-00-A-200-GA-000003-sectional & 20209-10-A-200-GA-000003-sectional.

- All works detailed in the Works Information within the existing building required to make the baggage system operational.

- AOR as required by D.1.12.19 for all baggage works.

"D.1.12.5.6

Section 6: Remaining Works

To achieve this sectional completion the following deliverables shall be completed:

- Demolition of Stand 11 building.
- Formation of North East entrance to baggage hall including all associated roadways.
- Strip out & disposal of the baggage equipment in the existing baggage hall as detailed in the Works Information."

40. The Settlement Agreement amended the access dates, completion dates and key dates under the Subcontract, including the following:

	Subcontract Access Dates	**Date**
1	Virgin High risk Buildings	29.04.13
2	Main Works – New Baggage Hall GL 10-15	10.10.14
3	Main Works – New Baggage Hall GL 3-10	19.11.14
4	Access Stand 11	22.09.15
	Subcontract Completion Dates – X5	
3	Baggage Works	17.11.15
4	Remaining Works	14.12.15
	Subcontract Key Dates	
2	Baggage works 11 weeks prior to baggage completion	01.09.15

The Issue

41. It is common ground that the subcontract works include:

    i) the baggage handling system works within the new pier building;

    ii) the baggage handling system works within the existing building required to make the new baggage system operational;

    iii) Beumer's works in connection with the AOR trials; and

    iv) disconnection of the redundant baggage equipment (including temporary carousels for Stand 11) but not including strip out and removal of the same.

42. What is in dispute is the allocation of those works as between sections 5 and 6; in particular, whether any of those works falls within section 6 and, if so, the defined scope of those works.

43. Vinci's case is that the bulk of the subcontract works, namely, items i), ii) and iii) above, fall within section 5. Item iv) disconnection of existing equipment, does not form part of the baggage system works or works required to make the baggage system operational and, therefore, it falls within section 6. On a proper construction of the Subcontract, as amended by the Settlement Agreement, the works falling within section 5 and section 6 are sufficiently identifiable and certain so that the sectional completion and delay damages provisions are operable and enforceable.

44. Beumer's case is that items i), ii) and iii) above fall within section 5 but it is not clear or ascertainable with reasonable certainty whether item iv) falls within section 5 or section 6. All of the works identified in the sectional completion criteria appear to fall within section 5, rather than section 6. Although some work must be within section 6, it is not possible to define what that must be. Therefore, there can be no certainty as to what works are encompassed in within each section. As a result, the provisions in the Subcontract and the Settlement Agreement imposing a liability to pay delay damages in the event that Beumer fails to meet the sectional completion dates for 'Baggage Works' and 'Remaining works' are too uncertain to be enforced.

Legal principles

45. When interpreting a written contract, the court is concerned to ascertain the intention of the parties by reference to what a reasonable person, having all the background knowledge which would have been available to the parties, would have understood them to be using the language in the contract. It does so by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the contract, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions: *Arnold v Britton* [2015] UKSC 36 per Lord Neuberger at paras. [15] to [23]; *Wood v Capita Insurance Services Ltd* [2017] UKSC 24 per Lord Hodge at paras. [8] to [15].

46. In construing any particular term, the court must have regard to the meaning of that term in the context of the whole contract and the words of each clause must be interpreted so as to bring them into harmony with the others.

47. The courts are reluctant to hold a provision in a contract void for uncertainty, particularly where the contract has been performed: *Anangel Atlas Compania Naviera SA v Ishikawajima-Harima Heavy Industries* [1990] 2 Ll.Rep. 526 per Hirst J pp. 545-546:

> "… the Court will strive if possible not to find a contract or contractual provision uncertain; indeed such a conclusion has been graphically described as a "counsel of despair" (*Nea Agrex SA v Baltic Shipping Co Ltd.,* [1976] 2 Lloyd's Rep. 47 at p.50; [1976] 1 QB 933, at p.943, per Lord Denning, MR).
>
> An important and well-recognised distinction must be drawn between conceptual uncertainty on the one hand, which invalidates the instrument, and evidential uncertainty, which merely means that a party may on a given set of facts be unable to establish that he comes within a particular aspect of the provision in question …"

See also: *Whitecap v John H Rundle* [2008] EWCA Civ 429 per Moore-Bick LJ at para.21:

> "The conclusion that a contractual provision is so uncertain that it is incapable of being given a meaning of any kind is one which the courts have always been reluctant to accept, since they recognise that the very fact that it was included demonstrates that the parties intended it to have some effect."

48. If it is open to the court to find an interpretation that will give effect to the parties' intentions, then it will do so: *GLC v Connolly* [1970] 2 QB 100 per Lord Denning MR at p.108; per Lord Pearson at p.110; *Scammell v Dicker* [2005] EWCA Civ 405 per Rix LJ at paras. [30] and [39]:

> "… it is simply a non sequitur to argue from a disagreement about the meaning and effect of a contract to its legal uncertainty. Parties are always disagreeing about the contracts which they make. They take those arguments, if necessary, to the courts, or to arbitration, for their resolution: and sometimes the resolution is very difficult indeed to arrive at. That is equally true of disputes as to the meaning of contracts and of disputes as to the application of contracts to the facts and of disputes as to the proper understanding of the facts. None of that makes a contract uncertain. For that to occur – and it very rarely occurs – it has to be legally or practically impossible to give to the parties' agreement any sensible content…
>
> … that is certain which can be rendered certain …"

49. However, a provision in a contract will be void for uncertainty if the court cannot reach a conclusion as to what was in the parties' minds or where it is not safe for the court to prefer one possible meaning to other equally possible meanings: *Arnhold & Co Ltd v Attorney General of Hong Kong* (1989) 47 BLR 129 per Sears J. p.136.

Discussion

50. It is clear from the subcontract documents, the NEC 3 conditions, the inclusion of Option X5 and the Subcontract Data in Schedule 4, that the parties intended that the Subcontract Works should be divided into sections for the purposes of access to, execution and completion of the works, and the imposition of delay damages in the event of failures to meet the sectional completion dates.

51. It is of note that the parties negotiated separate rates of delay damages that would become payable in respect of any failure by Beumer to achieve the section 5 completion date and/or the section 6 completion date. The parties must have had some understanding of the works within each section that would attract the agreed level of delay damages.

52. The descriptions of the Subcontract Works in the Works Information must be read against Beumer's obligations under the Subcontract to carry out the detailed design of the new baggage handling system. Against those obligations, it is neither surprising nor necessary for the Works Information to contain a detailed specification for the subcontract works.

53. There is no definition in any of the subcontract documents of "Baggage" or "Remaining Works". The drawings showing the layout of the works do not contain sufficient information from which to identify the works in each section. Therefore, one has to consider whether it is possible to determine what works must be encompassed by those words based on an objective reading of the descriptions in the subcontract documents.

54. Schedule 12 contains descriptions of the Subcontract Works. The works package sheet is a summary of the works in bullet form, rather than a detailed specification. The project specific part of the Works Information (Part B) sets out the works to be carried out by Vinci, as main contractor. Although clause 5 of the Subcontract Agreement imposes obligations on Beumer in relation to the main contract works, it does not assist in identifying the nature and scope of the subcontract works.

55. The works falling within section 5 are set out in section D.1.12.5.5 in Schedule 12. They can be summarised as the works necessary to provide the new operational baggage system. They include the works to be carried out in the area of the new pier building, which was where the new baggage handling system was to be constructed. They also include works within the existing building necessary to make the new baggage system operational. Finally, they include the subcontract works in relation to the AOR trials.

56. The works falling within section 6 are set out in section D.1.12.5.6 in Schedule 12. They can be summarised as the works necessary to remove redundant facilities and provide associated infrastructure following completion of the new operational baggage system.

57. In my judgment, section 6 includes works forming part of the Subcontract Works, namely, disconnection of the redundant baggage equipment from the existing baggage hall and disconnection of the temporary carousels in Stand 11 for the following reasons.

58. Firstly, section D.1.12.5.6 expressly provides that section 6 includes the strip out and disposal of the baggage equipment in the existing baggage hall. It is common ground that Beumer's works included disconnection of the existing equipment but not removal. Although Beumer's case is that this bullet point does not expressly refer to disconnection, the works package summary sheet does expressly refer to such disconnection works against the removal of redundant baggage equipment, indicating that this general description of removal was intended by the parties to include the subcontractor's disconnection work and the contractor's removal work.

59. Secondly, Schedule 12 expressly provides for Beumer to disconnect the redundant equipment, including the temporary carousels in Stand 11, *"on completion of new baggage system."* This must be after the works to make the new baggage system operational are complete, as it would not be rational to remove existing or temporary equipment before the new system became operational; otherwise there would be an interruption to the baggage handling facilities.

60. Thirdly, Beumer's case is that it is not clear whether disconnection of the existing or temporary equipment would be necessary to make the baggage system operational. Potentially, if disconnection of part of the redundant equipment were necessary to enable the new system to operate, it would bring that element of work into section 5. However, any dispute as to the necessity for any particular disconnection to make the new system operable would be capable of resolution based on factual and/or expert evidence. It would not give rise to conceptual uncertainty in respect of the provision.

61. Fourthly, the original timing and sequence of the Subcontract Works provided for access to be given to the new building in April and May 2014, for the execution of the new baggage system works, and for access to be given to Stand 11 in 2015, for disconnection of the existing equipment, one day after completion of the new system. This is consistent with the disconnection works being carried out after and separate from the baggage system works in section 5. Beumer relies on the fact that the original logic links have not been retained by the revised access and completion dates in the Settlement Agreement. However, although the revised timetable introduces some overlap, and access to Stand 11 (22 September 2015) is now prior to completion of the AOR trials and section 5 completion (17 November 2015), it is still after completion of the new baggage system (1 September 2015), so the basis of the argument remains sound.

62. Fifthly, the flow diagrams in section B.15 of Schedule 12 are not inconsistent with the above interpretation. The purpose of the flow diagrams is identified as providing the sequence on which Beumer should base its programme. They are not concerned with defining the content of the subcontract works or the timing of the same. Beumer's contention is that there are inconsistencies between the flow diagrams and the subcontract data, giving rise to additional uncertainty as to what must be completed in order to achieve sectional completion. There are differences between the periods shown on the flow diagrams for reliability testing and the period of eleven weeks for AOR tests set out in Schedule 4 as one of the key dates to be met by Beumer. The

differences cannot be fully reconciled. However, the flow diagrams show a minimum period of 20 days, a fixed period of 7 days plus a further minimum period of 30 days for reliability testing. They are not inconsistent with the mandatory period of eleven weeks between completion of the baggage works and completion of section 5.

Conclusion

63. For the reasons set out above, in my judgment, on a proper construction of the Subcontract, as amended by the Settlement Agreement, the works falling within section 5 and section 6 are sufficiently identifiable and certain so that the sectional completion and delay damages provisions are operable and enforceable.