DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

May 30, 2026

Belong (Construction) Ltd v Seddon Construction Ltd [2026] EWHC 1275 (TCC): Subsumed, But Not Cremated

***Belong (Construction) Ltd v Seddon Construction Ltd* [2026] EWHC 1275 (TCC)**

Technology and Construction Court (Manchester)
HHJ Stephen Davies sitting as a High Court Judge, 28 May 2026

Key Words

Part 8 Claim, Adjudication, Extension of Time, JCT Contract, Pre-Construction Services Agreement, Contractual Interpretation, Primary Obligations, Secondary Obligations, Liabilities, Subsumed, Default Clauses.

1. **Headnote**
    1. A contractor entered into a Pre-Construction Services Agreement ("**PCSA**") following the insolvency of a prior contractor. The PCSA required the contractor to provide pre-construction services, including visiting the property and carrying out an appraisal, survey and inspection of partially completed works. The then draft JCT contract documents also contained provisions concerning opening up and testing. [4], [25], [32]
    2. The parties later entered into a JCT Standard Building Contract (with Quantities), 2016 Edition, with a Schedule of Amendments, for completion of the works. [2]
    3. The final JCT Contract did not contain the same open-up and testing obligation relied upon by the employer. [5], [34]
    4. During the works, delay arose from the undertaking of air sealing works ("**ASW**") instructed under the JCT Contract. The contractor sought an extension of time ("**EOT**"). [2]–[4]
    5. The Contract Administrator refused the EOT on the basis that the need for the ASW arose from the contractor's earlier failure to comply with its obligations under the PCSA and the Proposed Contract Documents. [4], [25], [32]
    6. The contractor referred the dispute to adjudication and succeeded. The adjudicator concluded, in substance, that the relevant PCSA obligations had been superseded by the JCT Contract. [6], [50]–[51]
    7. On a Part 8 claim, the court held that, upon execution of the JCT Contract, primary obligations under the PCSA came to an end, but liabilities for pre-existing breaches survived and were "subsumed into and subject to" the JCT Contract. [13]–[16], [42], [46]

8. The expression “subsumed into and subject to” did not extinguish such liabilities. It incorporated them into the later contractual framework, while preserving their enforceability subject to the terms of that framework. [40]–[47]
9. Further, clauses excluding entitlement to an EOT or loss and expense where the relevant circumstance arose by reason of the contractor’s “error, omission, negligence or default” were not limited to breaches arising only under the JCT Contract. On the facts, they were capable of encompassing default under the closely connected PCSA. [52]–[56]
10. The adjudicator’s interpretation was therefore not accepted by the court. The court upheld the Contract Administrator’s position and indicated that Belong was entitled to declaratory relief, subject to appropriate qualification of the declarations concerning EOT and liquidated damages. [50]–[51], [57]–[60]

2. **Facts**
    1. The defendant contractor entered into a PCSA dated 27 May 2020 to provide pre-construction services after the insolvency of a previous contractor. [4], [24]–[25]
    2. The PCSA required the contractor to visit the property and carry out an appraisal, survey and inspection of partially completed works, as part of the pre-construction services. [25]
    3. The PCSA incorporated the then draft JCT contract documents, referred to as the Proposed Contract Documents (“**PCDs**”), which contained the relevant open-up and testing obligation relied upon by the Contract Administrator. [5], [31]–[32]
    4. The parties subsequently entered into a JCT Standard Building Contract (with Quantities), 2016 Edition, with amendments, dated 18 December 2020. [2]
    5. The final JCT Contract did not include the same obligation requiring the contractor to open up or survey the works beyond the requirements set out in the Contract Documents. [34]
    6. During the works, air sealing works were instructed. The contractor applied for an extension of time in relation to the resulting delay. [2]–[4]
    7. The Contract Administrator refused the EOT on the basis that the need for the ASW arose from the contractor’s earlier failure to comply with its PCSA/PCD obligations. [4], [25], [32]
    8. The contractor referred the dispute to adjudication and succeeded. The adjudicator concluded that the contractor’s obligations under the PCSA had been superseded, replaced and discharged by the JCT Contract to the extent that they differed. [6], [50]–[51]
    9. The employer brought Part 8 proceedings seeking a final determination of the contractual interpretation issues. [7]

3. **Issues**
    1. The primary issue was whether liabilities arising from breaches of obligations under the PCSA survived execution of the JCT Contract. [11]–[17], [36]
    2. A further issue concerned the meaning and effect of the phrase “subsumed into and subject to” in clause 2.3 of the PCSA. [11], [17], [40]–[47]
    3. A further issue was whether clauses excluding entitlement to an EOT or loss and expense where circumstances arose by reason of the contractor’s “error, omission, negligence or default” could extend to a default under the PCSA. [52]–[56]

4. **Decision**
    1. The court held that liabilities for pre-existing breaches of the PCSA survived entry into the JCT Contract and remained enforceable, subject to the terms of the later contract. [42], [46]
    2. The court held that the distinction between “obligations” and “liabilities” in clause 2 of the PCSA was deliberate and significant. [12]–[16], [19]–[22]

3. The court further held that the relevant JCT provisions referring to “error, omission, negligence or default” were sufficiently wide, in context, to include non-compliance with legal obligations arising under the PCSA. [52]–[56]
4. The adjudicator’s contrary interpretation was not accepted. [50]–[51], [56]
5. The court upheld the Contract Administrator’s refusal of the EOT and indicated that Belong was entitled to declarations, with the declarations concerning the contractor’s EOT entitlement and liquidated damages to be qualified so as not to have unintended wider effect. [57]–[60]

5. **Reasoning/ Ratio Decidendi**
    1. The court distinguished between primary obligations and secondary liabilities in contract law. Primary obligations are duties to perform; secondary liabilities arise upon breach. [15], [19]–[22]
    2. Clause 2 of the PCSA deliberately used different language in different sub-clauses. Clause 2.1 referred to “obligations”; clause 2.2 referred to “rights and obligations”; clause 2.3 referred to “rights and liabilities”. [11]–[14]
    3. That difference mattered. The court held that the reference to “liabilities” in clause 2.3 meant continuing liabilities for pre-existing breaches of obligations committed before entry into the JCT Contract. [15]–[16], [36]–[37]
    4. The phrase “subsumed into” was not treated as a demolition charge. It did not blow up the PCSA and scatter its liabilities across the contractual landscape. It meant that those liabilities became part of the larger contractual framework. [40]–[42], [46]–[47]
    5. The phrase “subject to” meant that such liabilities were to be enforced in accordance with the terms of the JCT Contract, including any relevant procedural, limitation, exclusion or liability provisions. [44], [46]
    6. The existence of clause 16 of the PCSA, which dealt with the period within which legal action could be commenced, supported the conclusion that claims under the PCSA were intended to survive execution of the JCT Contract. Otherwise, that clause would have had very little useful work to do. [41]–[43]
    7. The court rejected the argument that the JCT Contract retrospectively extinguished all rights and liabilities under the PCSA. [38]–[39], [46]–[49]
    8. In relation to the EOT provisions, the court held that references to “error, omission, negligence or default” were not confined to breaches of the JCT Contract itself. [52]–[56]
    9. Those words were wide enough to include non-compliance with legal obligations owed to the employer under a closely connected earlier contract, provided the conduct could properly be described as an error, omission, negligence or default. [56]
    10. Given the close relationship between the PCSA and the JCT Contract, the contractor’s earlier default could therefore be relevant when considering whether it was entitled to relief for delay. [55]–[56]

6. **Conclusion**
    1. The court concluded that the adjudicator erred in treating the JCT Contract as having extinguished liabilities arising under the PCSA. [50]–[51]
    2. Liabilities for pre-existing breaches remained enforceable and could operate within the later contractual framework. [42], [46], [49]
    3. The Contract Administrator’s decision was upheld, and the court indicated that appropriate declaratory relief should follow. [57]–[60]

Key Takeaway

Where sequential contracts are used in construction projects, transitional drafting matters. A later contract may supersede future obligations under an earlier agreement but it will not necessarily disinfect the project of liabilities already incurred. [13]–[16], [36]–[37], [42], [46]

If parties intend a later contract to extinguish liabilities already accrued under an earlier agreement, they need to say so clearly — preferably in words capable of surviving contact with a judge, an adjudicator, and the contractual archaeology of a construction project. [31]–[32], [38]–[39], [46]–[49]

Broad clauses referring to "error, omission, negligence or default" may extend beyond breaches of the later contract itself, especially where the earlier agreement and later contract form part of the same commercial machinery. [52]–[56]

Comment

This judgment is a useful reminder that contractual liabilities do not vanish merely because a later contract enters the room wearing a more expensive suit.

In Belong (Construction) Ltd v Seddon Construction Ltd [2026] EWHC 1275 (TCC), the court was not prepared to treat the JCT Contract as a contractual car crusher into which the PCSA, and all its inconvenient consequences, had been fed. The primary obligations under the PCSA may have come to an end on execution of the JCT Contract, but liabilities already generated by earlier breaches were not thereby sent to the legal afterlife. They survived, were "subsumed into and subject to" the JCT Contract and remained capable of doing real work. [13]–[16], [42], [46]

The distinction matters. Obligations are what one must do. Liabilities are what one may have to answer for when one has failed to do it. Seddon's argument depended upon treating that distinction as less significant than the court ultimately found it to be. HHJ Stephen Davies declined the invitation. Clause 2.3 of the PCSA did not operate as a retrospective amnesty. It did not say: "all previous defaults are forgiven, forgotten, and buried under the JCT paperwork." It said that rights and liabilities were subsumed into and made subject to the later contract. That is not extinction. It is incorporation with consequences. [11]–[22], [40]–[47]

The result is commercially sharp and legally orthodox. A contractor cannot necessarily avoid the consequences of a pre-construction failure simply because the final building contract omitted the same express obligation. Where an earlier breach caused later delay, the employer may be able to rely upon it when resisting an extension of time. Likewise, references in the JCT provisions to "error, omission, negligence or default" were broad enough, in context, to include defaults arising under the closely connected PCSA, rather than being artificially confined to breaches of the later JCT Contract alone. [34], [49], [52]–[56]

The adjudicator's interpretation was not accepted by the court. Sequential contracts are not magic tricks. One does not make a liability disappear by executing the next document in the project file. If parties intend a later contract to wipe the slate clean, they had better say so in words of frightening clarity, preferably in letters large enough to be seen from the quantity surveyor's car park. [38]–[39], [46]–[51]

The broader lesson is brisk. Drafting matters. Transitional clauses matter. Words such as "obligations", "rights", "liabilities", "subsumed" and "subject to" are not decorative confetti sprinkled across the contract for atmosphere. They do work. Here, they did enough work to preserve Belong's position, undo the adjudicator's analysis, uphold the Contract Administrator's refusal of the EOT, and leave Seddon with the uncomfortable discovery that yesterday's breach can still ruin today's programme. [11]–[16], [40]–[47], [50]–[60]

#ConstructionLaw #JCTContract #PCSA #ContractLaw #Adjudication #ExtensionOfTime #ContractInterpretation #Part8Claim #TCC #HighCourt #BelongVSeddon #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Distinction between Primary Obligations and Secondary Liabilities

1. ***Photo Production Ltd v Securicor Transport Ltd*** [1980] AC 827:
    1. *The case was relied upon as authority for the fundamental distinction in contract law between primary obligations and secondary obligations arising upon breach. [20]–[21]*
    2. *It established that a breach of a primary obligation may give rise to a substituted or secondary obligation on the part of the party in default. [21]*
    3. *The judgment was used to support the conclusion that "liabilities" in clause 2.3 of the PCSA referred to continuing liabilities for prior breaches rather than ongoing primary obligations. [15], [19]–[22]*
    4. *That distinction formed part of the court's reasoning that, on the proper construction of clause 2.3, liabilities for pre-existing breaches were capable of surviving the transition from the PCSA to the JCT Contract. [22], [42], [46]*

General Principles of Contractual Interpretation

1. ***Providence Building Services Limited v Hexagon Housing Association Limited*** [2026] UKSC 1:
    1. *The case was cited as containing a recent authoritative summary of the principles governing contractual interpretation, in the context of a dispute concerning a JCT contract. [10]*
    2. *Although not analysed in detail within the judgment, it provided the interpretative framework against which the court construed clause 2 of the PCSA and the relationship between the PCSA and the JCT Contract. [10]–[17]*

Priority of Themes

1. *The distinction between primary obligations and secondary liabilities formed the central analytical framework for determining whether liabilities survived the transition from the PCSA to the JCT Contract. [15], [19]–[22], [42], [46]*
2. *General principles of contractual interpretation provided the methodological approach to construing the wording "subsumed into and subject to" and the overall contractual structure. [10], [40]–[47]*

Legislation:

Absence of Statutory Framework in the Court's Reasoning: No statute or regulation formed part of the court's substantive reasoning on the contractual issues

1. *The judgment proceeded by reference to contractual provisions and common law principles of contractual interpretation, rather than by reliance upon any statutory or regulatory framework. [10]–[11], [36]*
2. *The reasoning was grounded in the analysis of the contractual wording of the PCSA and the JCT*

Contract, together with the established common law distinction between primary obligations and secondary liabilities. [13]–[16], [19]–[22]

3. *Although the judgment refers generally to legal obligations arising "whether in contract, tort or under statute or statutory obligation", no specific statute or regulation was identified as governing the interpretation of the contractual provisions or resolving the dispute. [56]*
4. *Accordingly, the case is best understood as a contractual interpretation decision concerning the survival and effect of liabilities under sequential construction contracts, rather than as a decision turning on legislation.*

Priority of Themes

1. *The absence of any statutory framework in the court's substantive reasoning, with the analysis proceeding by reference to contractual interpretation and common law principles. [10], [36]*
2. *The court's reliance, in substance, on the contractual documentation and case law authorities, with no statutory provision forming part of the analytical framework by which the contractual issues were resolved. [13]–[15], [19]–[22]*

Legal Texts & Commentary:

Lexicographical and Linguistic Aids to Contractual Interpretation: Oxford English Dictionary — definition of "subsumed"

1. *The court noted the Oxford English Dictionary definition of "subsumed" when considering the ordinary meaning of the contractual phrase "subsumed into and subject to". The definition identified "subsumed" as meaning to take up or absorb something into another, especially something larger or higher, or to include it. [40]*
2. *That ordinary meaning supported the conclusion that subsumption does not necessarily extinguish the independent existence of the thing subsumed. Rather, it may mean that the thing becomes part of a broader framework while still retaining legal significance. [41]*
3. *This interpretation informed the court's conclusion that liabilities under the PCSA continued to exist notwithstanding their subsumption into the JCT Contract, although their enforcement was subject to the terms of the JCT Contract. [41]–[42], [46]*

Priority of Themes

1. *The judgment illustrates the use of ordinary language and dictionary definitions as interpretative aids when construing contractual wording, particularly where a term such as "subsumed" has no established technical legal meaning. [40]–[41], [47]*
2. *No formal legal textbook or academic commentary appears to have formed part of the court's reasoning as recorded in the judgment. The court instead proceeded by direct analysis of the contractual language, supported by common law authority and linguistic interpretation. [10], [19]–[22], [36], [40]–[47]*

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

Adjudicator Assessor and Re-Assessor for the ICE
ICE DRC Member

ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012

The information & opinions expressed in this article are not necessarily comprehensive, nor do they represent the trenchant view of the author; in any event, this article does not purport to offer professional advice. This article has been prepared as a summary and is intended for general guidance only. In the case of a specific problem, it is recommended that professional advice be sought.

© 2026 Davies & Davies Associates Ltd

Back to Legal Updates