

Construction Law

(2009) 20 5 Cons.Law 5

1 June 2009

Book Review: Evaluating Contract Claims

Paul Newman

© Reed Elsevier (UK) Ltd 2009

Evaluating Contract Claims, R Peter Davison & John Mullen, Second Edition, Wiley-Blackwell, Hb Pp 304,
ISBN 978-1-4051-5920-3

Lawyers who specialise in construction litigation permit themselves a quiet purr of satisfaction, or perhaps relief. Property transactions may be all but dead at the moment but contractors are poking the smouldering embers in search of a plausible claim. They know what they need to break even and are goading their lawyers into action. No, there was no contract and the contractor is entitled to revalue his account on a cost plus basis.

Over the years Blackwell (now Blackwell-Wiley) has published a range of well-produced books, geared primarily towards the needs of construction professionals. The analysis of the law is sometimes a little superficial and leaves the lawyer some way short of an answer to his or her knotty problem. But ultimately, who cares, in the sense that lawyers have access to a range of specialist sources.

This book is imbued with the experience of claims consultants. They state their credentials in the Preface. These are people who have sat in site meetings and traded verbal blows. They know though the value of substantiation over assertion, often described in training courses as 'records, records, records'. It is a simple message but one too often still neglected. The law of damages, which underpins contractual claims, is summarised, but no more. The construction industry has changed and the authors identify the differences that devices, such as risk registers, have brought.

Where the authors are particularly adept is in emphasising how claims must be carefully constructed on good foundations. Build on sand and you know where that gets you. As such, there is a lengthy chapter entitled 'Establishing the base'. Categorise your variations, work out the value of any contract programmes, assemble the records, review the contents of programmes, eg where does the float lie? Perhaps the authors could have more emphatically indicated the need to test evidence from early on. Some, albeit few, claims will end up in arbitration or litigation (many more are submitted to the less intense glare of adjudication) so an early appreciation of the quality of human witnesses is essential.

The chapters dealing with how to formulate your claims are a 'must' for junior surveyors and engineers learning their trade. So much nonsense is spoken and written about reconstructive analysis. The authors reduce this theory to comprehensible terms. They are particularly strong on the more quantity surveying aspects of claims' formulation.

As with many Wiley-Blackwell books the authors manage to find space for a wide range of material. Global claims are revisited, as are head office overheads and the increasingly popular wasted management time.

This book seems refreshingly devoid of pretension. It is rooted in the experience of construction professionals, who appear not to have forgotten that the majority of their fellow professionals grace the site office rather than the corridors of the Technology & Construction Court.