

Insights

PCSA LIABILITIES DO NOT ALWAYS FALL AWAY: LESSONS FROM BELONG V SEDDON

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Summary

In this BCLP Insight, Zaynah Mirza takes a look at the case of *Belong (Construction) Ltd v Seddon Construction Ltd* [2026] EWHC 1275 (TCC) where the Technology and Construction Court considered what happens to liabilities that arise under a pre-construction services agreement (PCSA) before the transition to a building contract and whether a contractor can walk away from a breach committed during the PCSA period simply because the relevant obligation did not appear in the final building contract.

On construction projects, PCSAs are typically used before the parties enter into a main building contract. A PCSA allows contractors to carry out preliminary activities such as design development, placing early orders, surveys, investigations, and appraisals which need to be commenced before the main contract is agreed in order to keep to programme, and will usually be subsumed by the main contract when that is executed. The case of *Belong (Construction) Ltd v Seddon Construction Ltd* [2026] EWHC 1275 (TCC) considered what happens to liabilities that arise under the PCSA before the transition to a building contract and whether a contractor can walk away from a breach committed during the PCSA period simply because the relevant obligation did not appear in the final building contract.

The case largely turned on the interpretation of a "subsumption" clause, providing that PCSA rights and liabilities would be "subsumed into and be subject to" the eventual building contract. In a decision handed down on 28 May 2026 in the Technology and Construction Court, HHJ Stephen Davies held that such a clause did not extinguish liabilities for breaches already committed during the PCSA period. This decision is a clear signal that broadly worded subsumption language alone will not draw a line under PCSA liabilities. While, as noted above, it is often the parties' intention that obligations performed under a PCSA will be deemed to have been performed under the main building contract when that is entered into, if the parties want a clean break, the building contract needs to say so in plain terms.

Background

Belong (Construction) Ltd was the employer on a project for the development of a property for the purpose of providing a care home. Belong engaged Seddon Construction Ltd as a contractor for the works. In May 2020, the parties entered into a PCSA. Among Seddon's obligations under the PCSA was a requirement to open up and test the existing air sealing works (carried out by the previous contractor, who had become insolvent). The PCSA provided a mechanism by which Belong could appoint Seddon to carry out the main works, and the draft form of the JCT contract (the proposed contract documents) governed the parties' relationship during the pre-construction period. In December 2020, the parties entered into a JCT Standard Building Contract (with Quantities), 2016 Edition. When the JCT contract was signed, it did not contain the open up and testing obligation which had been included in the PCSA.

The dispute arose when, during the JCT works, the contract administrator instructed Seddon to carry out the air sealing works, and the resulting delay led Seddon to apply for an extension of time. The contract administrator refused Seddon's application on the basis that the need for those works arose from Seddon's failure, during the PCSA period, to carry out its open up and testing obligation. Seddon denied that it was under any contractual obligation to do this on the basis that:

- "the open up and testing obligation" contained in the PCSA did not appear in the final version of the JCT contract as executed and so had not been carried across into the JCT contract; and
- under the PCSA "the parties' respective rights and liabilities in respect of the PCSA shall be subsumed into and be subject to the JCT contract"; in other words, the PCSA liabilities had been replaced by the JCT contract regime.

The adjudicator agreed with Seddon. This prompted Belong to bring Part 8 proceedings for a final court determination.

The key issues

The heart of the dispute was Seddon's argument that execution of the JCT contract had the effect of extinguishing any liabilities that had arisen under the PCSA. Belong, by contrast, argued that the subsumption clause preserved those liabilities and made them subject to, but not extinguished by, the JCT contract.

For ease of reference, the key PCSA clause that the court interpreted is set out below:

"2.1. The parties' obligations under this agreement start on the date of this agreement or, if earlier, the date on which the Contractor commenced performance of the Pre-Construction Services until the earlier of: 2.1.1 the execution and completion of the Contract; or 2.1.2 the Contractor or Employer issuing a notice of termination of this agreement under Clause 11.

2.2. Before execution and completion of the Contract, the rights and obligations of the Employer and the Contractor in relation to the Works shall be governed by the provisions of this agreement supplemented by the Proposed Contract Documents. If there is any conflict or difference between this agreement and the Proposed Contract Documents, the Proposed Contract Documents will prevail.

2.3. On the execution and completion of the Contract, the parties' respective rights and liabilities in respect of all matters with which this agreement is concerned (including any design performed or any work carried out or order placed under Clause 4.3) shall be subsumed into and be subject to the Contract."

Key elements of the judgment

The court ruled in favour of Belong, holding that although the JCT contract did not contain an obligation for Seddon to carry out the open up and testing works, Belong's contractual claim arising from Seddon's failure to comply with the open up and testing obligation under the PCSA was not extinguished by entry into the JCT contract.

The court found that the difference in language across clause 2 of the PCSA was deliberate, noting that since Belong's solicitors had drafted the PCSA, the variation in wording was to be treated as intentional rather than "sloppy" drafting.

Clause 2.1 referred to "obligations", clause 2.2 to "rights and obligations", and clause 2.3, the subsumption clause, to "rights and liabilities". That progression was not accidental. The court held that "liabilities" in clause 2.3 meant continuing liabilities for breaches already committed during the PCSA period, not the ongoing primary obligations that fell away when the JCT contract was executed. The court was equally unpersuaded that "subsumed into" meant that pre-existing liabilities were extinguished. The word's ordinary meaning is to include in or absorb into something larger, not to cause the original thing to cease to exist. Pre-existing liabilities were carried across into the JCT contract and made subject to its terms, but they survived independently and remained enforceable.

Two further features of the contractual framework reinforced that conclusion. First, clause 16 of the PCSA provided that Belong could not commence legal proceedings under the PCSA more than 12 years from practical completion under the JCT contract. If the PCSA had ceased to exist as a separate, enforceable contract on execution of the building contract, that limitation clause would have been entirely redundant. Second, the JCT contract's "no override" provision, which stated that nothing in the PCSA would override or modify the JCT contract, did not assist Seddon. The court held that preserving liability for pre-existing PCSA breaches did not override or modify the JCT contract; it simply kept those liabilities alive and subject to the terms of the JCT contract.

The JCT contract also contained provisions which prevented Seddon from claiming an extension of time or loss and expense for events arising from its own "error, omission, negligence or default". The judge found that these provisions were not limited to breaches of the JCT contract itself; they extended to breaches of obligations owed under the PCSA, given the close contractual connection between the two contracts.

Practical lessons

The judgment makes clear that subsumption clauses in PCSAs do not operate as a general release of liabilities for breaches that occurred during the pre-construction period. Courts will look carefully at the precise language used, and broadly worded provisions will not be read as extinguishing pre-existing liabilities unless the contract says so expressly. Given the widespread use of subsumption language in standard PCSA drafting, parties on both sides of a construction contract would do well to revisit these provisions before a dispute arises. Some useful points to consider include:

- checking whether the PCSA uses "obligations", "liabilities", or both, and ensuring the distinction reflects what the parties actually intend;
- ensuring that the PCSA's limitation and enforcement provisions, including any longstop period, are coherently aligned with the main contract, so that rights can be enforced when the time comes;
- clarifying in the building contract itself that the obligations and activities to be performed by the parties under the PCSA are deemed to have been performed or are required to be performed under the building contract once that is entered into; and
- reviewing default and relief provisions in the building contract to assess whether they may extend to conduct or omissions during the PCSA period.

If the parties intend the building contract to extinguish all PCSA liabilities, that must be stated in clear and express terms; general subsumption language will not achieve it.

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