



## LEGAL BRIEFING

### *Chili Developments Ltd v (1) Commission for the New Towns (known as English Partnerships) (2) Tees Valley Regeneration Ltd*

Queen's Bench Division, Mr Justice Jack

#### ***The Facts***

This was a case involving the Middlesborough Dock, now renamed Middlehaven. Chilli Developments Ltd ("Chilli") expressed an interest in undertaking a development on the land. There were negotiations with English Partnerships ("English") and Tees Valley Regeneration Ltd ("Tees") for a development agreement to enable Chilli to build on part of the land. During the negotiations, Chilli and English entered into two lock-out or exclusivity agreements, whereby English agreed not to deal with others in respect of the land for the period of the agreement. The negotiations with Chilli were terminated by English by a letter dated 15 July 2005.

Chilli alleged that the second lock-out agreement was extended to 21 August 2005. The lock-out agreement provided that English would not during the period of the agreement: invite tenders for or enter into negotiations for the sale, development, letting or charging of the property; nor allow any person to view, measure, survey or carry out the site investigations on the property unless required to do so by law. In addition Chilli and English agreed that each owed the other a duty of good faith.

Chilli alleged that English breached the second lock-out agreement and claimed damages from English for these breaches and from Tees for inducing these breaches. Chilli alleged that Tees and English negotiated with and provided information to a third party and entered a tender from them. In addition, it was alleged that English and Tees entertained a presentation from a third party relating to the land. It was also alleged that English and Tees breached the duty of good faith in that English did not intend to enter into a development agreement with Chilli.

#### ***The Issue***

Did English and Tees breach the lock-out agreement and, in particular, did English and Tee breach the duty of good faith?

#### ***The Decision***

English and Tees had acted in good faith throughout its negotiations with Chilli i.e. provided Chilli could meet their requirements they were willing that English enter a development agreement with Chilli. They were not confident that Chilli would be able to do so, and some individuals were more doubtful than others, but they were willing to give Chilli the chance. Despite these doubts, there was goodwill towards Chilli. That was why English were willing to enter into the lock-out agreements and to extend the deadlines when they were not met. Chilli was accepted as English's preferred developer but after the failure of a proposed joint venture, English called a halt to the negotiations. There was also no extension of the lock-out agreement after 25 April 2005. Accordingly, there was no bar to English terminating the negotiations as it did.

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*Comment*

This case is an example of the difficulty in showing a breach of a lock-out agreement and the term of good faith in such an agreement. These agreements have been criticised as being the opposite to the adversarial position of parties during negotiations where each party is entitled to pursue its own interests. The current law provides few remedies for private tenderers who are not later awarded the contract, even if they have had the benefit of exclusivity or lock-out agreements.

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