

Time of the Essence

Rachel Watkin

www.rachelwatkin.co.uk

Time of the Essence

Rachel Watkin



Rachel has specialised in Property Disputes for almost 20 years.

Over the years, Rachel will have encountered most, if not all, types of property disputes. She acts in relation landlord and tenants issues, development matters, agricultural disputes and the Competition Act 1998

Rachel sits as a Deputy District Judge in civil, family and chancery (land matters, insolvency and probate cases).

www.rachelwatkin.com

Time of the Essence

Time is of the Essence

A phrase in a contract that means that performance by one party at or within the period specified in the contract is necessary to enable that party to require performance by the other party.

Failure to act within the time required constitutes a breach of contract. The general rule is that time is not of the essence unless the contract expressly so provides. As a result, with respect to real estate transactions, the modern view is that time is not of the essence unless the parties have manifested such an intent. The same is generally true in construction contracts and in contracts relation to the manufacture of goods. When time is not of the essence, courts generally permit parties to perform their obligations within a reasonable time.

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- You must build the wall by 4pm on Tuesday 14 March 2017 (*and time is to be of the essence*).
- Time is to be of the essence within this Agreement.

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s. 41 Law of Property Act 1925

“Stipulations in a contract, as to time or otherwise, which according to rules of equity are not deemed to be or to have become of the essence of the contract, are also construed and have effect at law in accordance with the same rules.”

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Standard Commercial Property Conditions (Second Edition)

8.1.1 *Completion is 20 working days after the date of the contract but time is not of the essence of the contract unless a notice to complete has been served.*

Time of the Essence

Strict application

Union Eagle Ltd

v

Golden Achievement Ltd

[1997] UKPC 5

Time of the Essence

If failure to perform an obligation on time would deprive the claimant of substantially the whole benefit of the contract, then time is of the essence for that deadline.

United Scientific Holdings v Burnley Borough Council

[1978] AC 904 (HL)

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Benito Di Luca

v

Juraise (Springs) Limited

[1997] EWCA Civ 2419

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Lord Justice Nourse stated:

“ The rule is a universal one and except where the language of the option demonstrates the contrary, it applies irrespective of what may or may not be reasonably thought to have been the needs of the grantor”.

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Practical examples:

- Building Contracts
- Sales contracts
- Rent Review Clauses
- Break Notices
- Option Agreements
- Terms of the Contract

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Prevention:

Multiplex Constructions (UK) Ltd

v

Honeywell Control Systems Ltd

[2007] EWHC 447 (TCC)

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Prevention:

Akzo Nobel UK LTD

V

Arista Tubes LTD

[2010] EWCA Civ 28

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questions ? ? ? questions

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