

Supreme Court hands down decision in Triple Point v PTT

1. The Supreme Court handed down its judgment in the case of *Triple Point Technology Inc v PTT Public Company Ltd* [2021] UKSC 29 today, 16 July 2021.
2. The case concerned a dispute which had arisen between Triple Point (a designer and developer of software) and PTT (a commodities trader). PTT had appointed Triple Point under a staged milestone payment contract to: (i) replace its existing trading system (Phase 1 of the works) and (ii) develop the system to accommodate new types of trade (Phase 2 of the works).
3. The contract included a liquidated damages provision as follows:

“If Contractor fails to deliver work within the time specified and the delay has not been introduced by PTT, Contractor shall be liable to pay the penalty at the rate of 0.1% of undelivered work per day of delay from the due date for delivery up to the date PTT accepts such work...”

4. Work proceeded slowly following commencement of the project. Phase 1 of the works was completed 149 days late. PTT paid Triple Point for Phase 1 but refused to pay invoices in respect of Phase 2 on the basis that the dates for payment were tied to the milestones for completion. Triple Point did not dispute that it had not met the milestones for Phase 2 but refused to continue with the works without payment. Triple Point suspended work and left the site.
5. PTT claimed that this suspension of works constituted a repudiatory breach and terminated the Contract in reliance on its terms. Triple Point then brought proceedings for what it claimed were outstanding sums. PTT counterclaimed for its own losses arising out of the termination and liquidated damages for delay.
6. One of the questions which arose for determination thus concerned the interpretation of the liquidated damages provision and specifically how the clause operated in the case of termination prior to completion (or acceptance by PTT) of the works.
7. At first instance, Jefford J had held that the liquidated damages provision applied up to the date of termination (in respect of both the Phase 1 and 2 works) and that general damages were recoverable thereafter.
8. On the same point, the Court of Appeal held that while the liquidated damages clause applied in order to entitle PTT to liquidated damages in respect of Phase 1 (which had been completed and the work handed over), it had no entitlement to liquidated damages in respect of the Phase 2 works since no sections of that Phase had been completed (or accepted). Damages were therefore at large in respect of Phase 2.
9. The Supreme Court considered three issues on appeal. On the question of interpretation of the liquidated damages clause, the Supreme Court unanimously allowed PTT’s appeal and reverted to the decision at first instance, holding that the liquidated damages clause applied up to the date of termination and that general damages were recoverable from then onwards.
10. The Supreme Court’s decision signals a return to what had previously been understood to be the orthodox approach prior to the Court of Appeal’s judgment, that (subject of course to clear, express terms) liquidated damages cease to accrue on termination but rights accrued as at the date of termination survive. Further, the Supreme Court clarified that the *British Glanzstoff* decision [1913] AC 143 to which the Court of Appeal had given significant importance, was confined to its specific facts and did not create a special rule applying to liquidated damages clauses (see for example paragraphs 42-43 per Lady Arden).

11. It is notable that in the course of his concurring judgment (to the leading judgment of Lady Arden and with which Lord Burrows agreed) Lord Leggatt made reference to an article written by Michael Davie QC and Neil Dowers of 4 Pump Court which was published in the Edinburgh Law Review in 2019 (see paragraph 81 of the decision).
12. The full Supreme Court judgment is [available here](#).

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