# Ted Lowery considers a case in which the meaning of subsumed was incorrectly presumed

*Belong (Construction) Limited v Seddon Construction Limited* [2026] EWHC 1275 (TCC)

In the Technology and Construction Court

Before: HHJ Stephen Davies sitting as a High Court Judge

Judgment delivered 28 May 2026

## The facts

On 27 May 2020, Belong entered into a Pre-Construction Services Agreement with Seddon. The PCSA included the Proposed Contract Documents, primarily comprising an amended JCT Standard Building Contract (with Quantities) 2016 edition, that it was intended would be executed once the pre-construction services were completed.

In the PCSA:

- Clause 2.1 provided that the parties' obligations would continue up to the earlier of the execution of the JCT contract or termination of the PCSA.
- Clause 2.2 provided that prior to execution of the JCT contract, the parties' rights and obligations would be governed by the terms of the PCSA, supplemented by the Proposed Contract Documents.
- Clause 2.3 provided that the parties' respective rights and liabilities under PCSA would be "*… subsumed into and be subject to…*" the executed JCT contract.
- Clause 16 prohibited Belong from commencing legal action against Seddon under the PCSA after 12 years from the date of practical completion of all of the JCT contract works.

The JCT contract was executed on 18 December 2020. Whilst the work scope for the JCT contract appearing within the Proposed Contract Documents had included a requirement for Seddon to open up and test the existing air sealing installations, the JCT contract, as executed, did not.

Practical completion of the JCT contract works was delayed, in part due to Seddon undertaking air sealing works in compliance with the Contract Administrator's instructions. The Contract Administrator rejected Seddon's application for an extension of time on grounds that the need for the air sealing works to be undertaken during the course of the JCT contract works was due to Seddon's earlier failure to open up and test the existing air sealing installations, in breach of the PCSA: clauses 2.28.6.5 and 4.20.3 in the JCT contract precluded entitlements to time and/or money in the event of any error, omission, negligence or default by Seddon.

Seddon commenced adjudication contending that it was not under any contractual obligation to open up and test the existing air sealing installations where: (i) this obligation appeared in the Proposed Contract Documents but not in the version of the JCT contract as executed; and, (ii) the PCSA expressly provided that the parties' respective rights and liabilities under the PCSA were to be subsumed into and be subject to the executed JCT contract. Belong disagreed, contending that it had a contractual right to complain about Seddon's failure to open up and test the existing air sealing installations during the currency of the PCSA, and, that this right had not been lost in consequence of the parties executing the JCT contract.

In a decision dated 2 May 2024, the adjudicator found for Seddon. Belong commenced Part 8 proceedings seeking a final determination from the court.

## The issue

Did the requirement in the PCSA for Seddon to open up and test the existing air sealing installations fall away when the JCT contract was executed?

## The decision

The judge rejected Seddon's submission that there was no difference between obligations and liabilities, finding that as a matter of interpretation, the differentiation between obligations, rights and liabilities in clauses 2.1, 2.2 and 2.3 of the PCSA was intentional and made perfect sense. These clauses reflected a distinction between primary and secondary obligations, where it was conventional to equate the latter with liabilities for breaches of a primary obligation. Hence, once the JCT contract was executed, whilst clauses 2.1 and 2.2 provided that the parties' primary obligations under the PCSA came to an end, any secondary obligations, synonymous with the liabilities referred to in clause 2.3, did not.

The broader terms of the PCSA did not disturb this position: in contrast to the typical arrangments with a letter of intent, where the PCSA provided for specific pre-construction services, its subject matter was different to that of the JCT contract. It was therefore likely that there would be discrete liabilities under the PCSA which would endure and might need to be enforced after execution of the JCT contract.

The judge observed that the *Oxford English Dictionary* definition of subsumed i.e. *"to take up or absorb (a concept, thing, person, etc.) into another, esp. one which is larger or higher; to include in"*, indicated that the thing to be subsumed did not entirely lose its independent existence. Hence in clause 2.3, the word *"subsumed"* did not necessarily mean that the PCSA no longer remained in existence for the purposes of pursuing any liabilities following execution of the JCT contract. Amongst other things, this would be inconsistent with clause 16 in the PCSA.

The judge endorsed the rejection of Seddon's application for an extension of time, finding that there was no reason why a state of affairs which amounted to a breach of an obligation owed by Seddon to Belong under the PCSA should not fall within the ambit of clauses 2.28.6.5 and 4.20.3 in the JCT contract, including where these clauses were not expressly limited to *"this contract"*.

## Commentary

Many pre-contract arrangements such as PCSAs, letters of intent and heads of agreement provide for these instruments to be superseded when the substantive contract is subsequently executed. As in this case, where the mechanics of the supersession are not seamless, there may be uncertainty as to what rights, obligation and liabilities survive the transition.

**Ted Lowery**
July 2026