

# **Triple Point Technology Inc (Respondent) v PTT Public Company Ltd (Appellant)**

**Case ID: UKSC 2019/0074**

## **Case summary**

### **Issue**

Where one party (the "employer") contracts with another (the "contractor") to carry out works for it, and the contract provides that liquidated damages are payable if the works are delayed, whether (a) the employer only has a right to such damages if the contractor completes the works, or (b) such damages are still payable even if the employer terminates the contract before completion. Whether a limitation of liability clause which excludes loss caused by "negligence" applies to acts amounting to a breach of a contractual duty to use reasonable care and skill, but which do not constitute negligence in tort. Whether a limitation of liability clause which expressly excludes claims for which there are "specific remedies expressly identified as such in this contract" nonetheless applies to liquidated damages under the contract.

### **Facts**

The Appellant is a Thai company which (among other activities) trades in oil and gas.

The Respondent is a US-based company which specialises in the development and implementation of commodities trading software.

On 8 February 2013 the parties entered into a contract under which the Respondent agreed to provide software and software implementation services to the Appellant.

The contract provided for a total price of US\$6,920,000 to be paid in instalments upon the achievement of nine "milestones".

It also provided for liquidated damages to be paid in the event of the Respondent's work being delayed, calculated at a daily rate "from the due date for delivery up to the date [the Appellant] accepts such work". The contract also provided for a cap on the Respondent's liability, but excluding both "specific remedies expressly identified as such in this Contract", and liability for "fraud, negligence, gross negligence or wilful misconduct". Work began in March 2013 and soon fell into difficulties.

A dispute arose over payments due and the Respondent suspended work in May 2014. On 25 March 2015 the Appellant terminated the contract; by this time, only the first two payment milestones had been achieved. Proceedings were commenced by the Respondent to claim sums it alleged were due in respect of software licence fees; the Appellant counterclaimed for liquidated damages for delay prior to termination and its costs arising out of the termination of the contract.

### **Judgment appealed**

[\[2019\] EWCA Civ 230](#)

## **Parties**

### **Appellant(s)**

PTT Public Company Ltd

### **Respondent(s)**

Triple Point Technology Inc

## **Appeal**

### **Justices**

Lord Hodge, Lady Arden, Lord Sales, Lord Leggatt, Lord Burrows

### **Hearing start date**

12 Nov 2020

### **Hearing finish date**

12 Nov 2020

### **Watch hearing**

12 Nov 2020 [Morning session](#) [Afternoon session](#)

## **Judgment details**

### **Judgment date**

16 July 2021

### **Neutral citation**

[2021] UKSC 29