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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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BORDEN, J., concurring. I agree with the majority that this case is not ripe for adjudication. I write separately, however, because I reach that result by a somewhat different route from the majority.

I disagree with the majority that the defendants, Alstom Power, Inc., and Black and Veatch Construction, Inc., had not asserted an entitlement to the effect of the force majeure clause of the construction contract between them and the plaintiff, Milford Power Company, LLC. In my view, the defendants have asserted such an entitlement; they simply had not yet quantified that entitlement with sufficient concreteness to make the case ripe for adjudication. In addition, because this was a complex construction contract of significant financial impact on both parties, as a practical matter it was very unlikely that this particular dispute would be the only contractual dispute between the parties. That unlikelihood buttresses my conclusion that, when the plaintiff brought the action and the trial court decided it, it was not ripe for adjudication.

This was a $230,000,000 contract for the construction of an electric power plant, with a guaranteed completion date of March 31, 2001, and a liquidated damages clause calling for such damages in the amount of $50,000 per day after the thirtieth day. Although the defendants' notice letter to the plaintiff stated that the incident in question ''*may* result in cost and schedule impact to the achievement of Substantial Completion,'' it also stated that ''*we must consider this [incident] to be a Force Majeure event* and hereby advise you accordingly.'' (Emphasis added.) See footnote 3 of the majority opinion. Thus, it is clear to me that the defendants were asserting their substantive entitlement to force majeure treatment of the incident. Indeed, it would be naive to think that, in a contract of this magnitude with liquidated damages of this magnitude, the defendants would not be asserting such an entitlement.

Nonetheless, I agree with the majority that the case was not ripe for adjudication because the defendants have not yet made the *amount* of their claimed entitlement sufficiently concrete. The dispute resolution mechanism provided by §§ 31.1 and 31.2 of the construction contract called for an attempt to resolve all disputes, including this one, by agreement; and, failing such agreement, the parties could go to court if the amount in dispute was more than $1,000,000, as this dispute was.[1] Pursuant to § 9.5 (b) of the construction contract, that mechanism, however, was premised on ''receipt of the notice *which specifies the length of any delay in the contractually guaranteed dates, and/or the adjustment to Contract Price . . . as the case may be . . . .*'' (Emphasis added.) That language, in my

view, contemplated a notice by the defendants of sufficient specificity, regarding the claimed length of delay and the consequent amount of adjustment to the contract price, if any, so that the ensuing dispute resolution mechanism would have a reasonable likelihood of success. In other words, until the defendants were prepared to make a demand for extra time and money with some reasonable degree of specificity, it is unlikely that the parties would be able to engage in the inevitable bargaining that would attend the dispute resolution process, with some reasonable likelihood of reaching an agreement.[2] In the meantime, moreover, both parties had the duty to continue performing their contractual obligations under § 31.3 of the construction contract.

The plaintiff alleged that the defendants, in their progress report of August 16, 2000, approximately six and one-half months after the incident, notified the plaintiff of a delay in the completion date of the unit 1 generator of the power plant to July 18, 2001, ''*at the earliest* . . . .'' (Emphasis added.) The plaintiff also alleged that the defendants gave notice that they ''*may* incur labor and material costs of *in excess of $14 million* as a result of the Incident.'' (Emphasis added.) These were not sufficiently concrete figures to invoke or to make productive the voluntary dispute resolution mechanism.

What we had here, then, was a substantive claim by the defendants of force majeure, but one that was not adequately quantified when the case was filed and, subsequently, when the trial court decided it. I can certainly understand the plaintiff's desire to have the force majeure issue decided authoritatively, so that it could know with certainty whether, on the one hand, it would be faced with a completion delay and a higher contract price, or, on the other hand, it would be entitled to liquidated damages for an unjustified delay in the completion date. Until the length of that claimed delay and consequent claimed increase in the contract price, if any, were more concretely quantified by the defendants, however, the resolution of that question was simply premature.

Furthermore, it must be kept in mind that this was a very complex construction contract for a very complex project. It was not a simple sales contract. Thus, this particular dispute involves, at bottom, a claim of breach of a complex construction contract: the plaintiff would be claiming that the defendants breached the guaranteed completion date clause and, therefore, that the plaintiff would be entitled to liquidated damages; the defendants, to the contrary, would be claiming that they were not in breach because of the force majeure clause and, possibly, that they were entitled not only to an extension of the completion date but to an increase in the contract price. It is inconceivable to me that, at the end of this project, this dispute over the applicability of

the force majeure clause would be the only contractual dispute between the parties. Almost inevitably, projects of this magnitude yield disputes over change orders, other delays, quality of performance, timeliness of payment, and a myriad of other issues. This, in my view, counsels strongly against early adjudication of just one of the many contractual disputes likely to arise between the parties, and further supports the conclusion that this particular contractual dispute was not ripe for adjudication.

[1] The dispute resolution mechanism of §§ 31.1 (c) and 31.2 of the construction contract called for arbitration of disputes involving lesser amounts.

[2] This explains why, according to the plaintiff's allegation, the defendants have refused to engage in the dispute resolution process called for by the construction contract. Until the defendants' claim was sufficiently quantified, that process was likely to be a waste of everyone's time and energy.