

CLYDE CONTRACTORS P/L V NORTHERN BEACHES P/L [2001] QCA 314

Supreme Court of Queensland – 7 August 2001

FACTS

Clyde contractors entered into a contract with Northern Beaches in which Clyde was to carry out certain work with respect to a land development for Northern Beaches.

Clyde Contractors claimed that Practical Completion was reached on 22 March 1999 as evidenced by letters of the Superintendent dated 19 and 20 May and that Northern Beaches failed to pay monies owing.

Northern Beaches refused to pay saying that practical completion had not been achieved as they had not been informed of practical completion in the correct manner and therefore they were entitled to liquidated damages from 16 March 1999.

ISSUES

At what date was practical completion reached – were letters from the Superintendent sufficient evidence that practical completion had been reached?

Whether Clyde was entitled to the return of the retention moneys due to the fact that no Certificate of Final Completion was issued?

FINDING

It was held that the letters from the Superintended provided sufficient evidence that practical completion had been reached and there was nothing in the contract requiring notification to be given in a specific form.

The retention moneys were to be returned to Clyde due to the fact that the matter was not raised by Northern Beaches until the time of the Appeal. Had they raised the matter earlier Clyde would have taken steps to ensure the Certificate was issued. No reason was found as to why a certificate would not have been issued.

QUOTE

“There was an onus on the appellant to demonstrate that there was some issue to be tried or some other good reason for the matter to go to trial. In all the circumstances it cannot be said that the learned District Court judge was wrong in concluding that on the evidence practical completion had been reached in March 1999 and there was no triable issue with respect thereto”

IMPACT

That essentially practical completion is a question of fact and the absence of a formal certificate does not necessarily mean that practical completion has not been reached.