

SHORRLONG PTY LTD V NORTHERN TERRITORY HOUSING COMMISSION [1999] NTSC 140

Supreme Court of NT – 10 December 1999

FACTS

Shorrlong was retained by the Commission to supply labour and materials for the maintenance of various dwellings in Alice Springs. The contract was due to expire on 31 December 1995. On 30 March 1995, the Commission gave written notice to Shorrlong to terminate the contract. Shorrlong claimed that the Commission had wrongfully repudiated the contract and elected to accept the Commission's repudiation. Shorrlong sued the Commission for breach of contract.

In its Defence the Commission claimed that Shorrlong had made false claims for labour and materials which had not been supplied in breach of an implied fundamental term of the contract. Shorrlong objected to the pleadings in the Commission's Defence on the grounds that it failed to provide particulars of the alleged fraud. The Commission sought discovery of documents held by Shorrlong.

ISSUES

Should the Court order that Shorrlong make discovery before the Commission was required to particularise its pleadings relating to the fraud?

FINDING

The Commission had pleaded reasonable grounds for suspecting that there had been fraudulent behaviour by Shorrlong and the request for discovery did not appear to be fishing for a case. Therefore, the Court exercised its discretion to order that Shorrlong provide discovery of relevant documents before the Commission had to provide full particulars of its Defence.

QUOTE

Mildren J said:

"The relevant principles to be applied are as follows. The general rule is that a party who pleads fraud must provide particulars; those particulars will govern what is or is not discoverable. Consequently, the general rule is that discovery will not be ordered in respect of an issue in a pleading if the issue is not fully particularised.

However, the Court retains a discretion to order otherwise ... [I]n my view, there is no reason in principle to limit the granting of relief. ... There is no hard or fast rule as to the class of case in which particulars should precede discovery, or discovery be ordered before particulars; but the judge must exercise a reasonable discretion in every case after carefully looking at all the facts, and taking into account any special circumstances."

IMPACT

While a party is usually expected to fully particularise its pleadings before discovery; the Court retains a discretion to allow discovery before the full particulars are provided.

This discretion is allowed as in some cases one party will have access to all the documents and the other party may not be able to properly plead its case until it sees those documents.

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