

VILLANI & ANOR V DELSTRAT PTY LTD & ANOR [2002] WASC 112

Supreme Court of Western Australia – 16 May 2002

FACTS

This proceeding involved an application by Mr. & Mrs Villani to set aside the award of an arbitrator for misconduct by failing to decide substantial pleaded issues between the parties. Mr. & Mrs Villani had engaged Delstrat to build a house for them in Ascot Waters.

A dispute arose between the parties as to the date for practical completion and as provided in the contract, the matter was referred to arbitration. The Villanis submitted that there had been an oral agreement in the contract that the house would be finished no later than September 2000.

The arbitrator did not at any stage expressly deal with the Villani's claim that a term of the contract relating to practical completion on or before 20 September 2000 had been breached or that damages therefore flowed from that breach.

ISSUES

Did the arbitrator ignore or fail to consider or decide a material issue in dispute during the arbitration?

If so, did that failure amount to misconduct under the Commercial Arbitration Act?

If it did amount to misconduct, should the court exercise its discretion to set aside the award?

If the award was set aside, should the matter be remitted to the same arbitrator or should the arbitrator be removed?

FINDING

It was held that by providing no reasons for excluding certain documents and not determining whether certain documents formed part of the contract, the arbitrator had failed to determine all the necessary issues and controversies within the arbitration.

The issue as to the completion date was a material fact which may have influenced the award.

The failure to determine all issues in dispute in an arbitration can amount to misconduct because the procedure may have affected the outcome in some material way.

The award was set aside, and the matter remitted to the same arbitrator as there were no reasons put forward as to why he should be removed. The arbitrator was familiar with the evidence and had already determined many of the matters in controversy between the parties.

QUOTE

“It is not of course necessary for an arbitrator to deal with every issue which arises, or every argument or submission put forward. An arbitrator must, however, deal with the substance of a claim or counterclaim, particularly those matters which will materially affect the result.”

IMPACT

Failure by an arbitrator to take into account something that may have affected the outcome of the arbitration in some material way amounts to misconduct on the part of the arbitrator.

The court has a discretion to set aside the whole or part of the arbitrator’s award. The failure of the arbitrator to decide an important issue in dispute adversely affected the outcome of the entire arbitration process.

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