

BHP STEEL (RP) PTY LTD V ABB ENGINEERING CONSTRUCTION PTY LTD [2001] WASC 73

Supreme Court of WA – 20 March 2001

FACTS

BHP DRI was constructing a plant at Port Hedland and ABB was a head contractor for part of the works at the plant.

Monaveen was ABB's subcontractor and it proposed to purchase the steel it needed to complete the works from BHP Steel.

Both BHP DRI and BHP Steel were part of the BHP group of companies and BHP DRI wanted BHP Steel to supply Monaveen with the necessary steel. However, BHP Steel had concerns about extending credit to Monaveen to allow it to purchase the necessary steel and it therefore had discussions with ABB about some security being provided to assure BHP

Steel that it would be paid for steel supplied to Monaveen. While these negotiations were conducted BHP, Steel supplied some steel to Monaveen. Eventually Monaveen became insolvent after the subcontract was terminated and \$266,922.00 remained owing to BHP Steel.

BHP Steel issued proceedings against ABB claiming breach of contract, misleading and deceptive conduct, estoppel and negligence and alleged that ABB had promised that it would pay BHP Steel for the steel if Monaveen did not pay for the supplied steel.

ISSUES

Had there been a contract between BHP Steel and ABB with ABB promising to pay BHP Steel if Monaveen did not pay for steel supplied by BHP Steel?

Had there been representations made by ABB that it would pay BHP Steel any outstanding balance if Monaveen did not pay or all the steel supplied?

FINDING

The Court found that ABB never promised to pay BHP Steel directly if Monaveen did not pay for supplied steel.

The negotiations between the parties never led to an agreement that ABB would pay BHP Steel if Monaveen defaulted in payments to BHP Steel. At best ABB stated that it would require Monaveen to ensure that BHP Steel was paid before it paid Monaveen. There was also no evidence that ABB had represented to BHP Steel that it would pay BHP Steel if Monaveen did not pay for steel supplied for the work at the plant.

QUOTE

Owen J said:

“The agreement apparently reached between the defendant [ABB] and Monaveen is that Monaveen will satisfy it (the defendant) about payment of invoices due to the plaintiff [BHP Steel] prior to Monaveen becoming entitled to payment of moneys from the defendant.

It would be difficult to construe the letter as evincing an intention by the defendant to be bound contractually to the plaintiff to do anything at all. ... I am not saying that the provision of comfort to one providing credit can never and the legal effect of the transaction were promissory or merely representational.”

IMPACT

When negotiating it is important to understand whether statements made by the other party are promises or simply acknowledgements of your concerns.

In this case ABB had stated during negotiations that it sympathized with BHP Steel’s concerns about Monaveen’s credit worthiness, but it never promised to do anything to ensure that BHP Steel would be paid for the steel it supplied.

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