DOYLES
CONSTRUCTION LAWYERS

BARTER V MAYOR OF MELBOURNE (1870) 1 AJR 160

Federal Court

FACTS

Barter contracted with the Mayor of Melbourne. The contract provided for altered works to be measured and paid for and further provided that "no claim will be allowed for extras unless ordered in writing".

Barter claimed payment for, among other things, additions, alterations and extra works.

ISSUES

Barter argued that the additions and alterations, as distinct from extras, were not required by the contract be in writing.

Accordingly, the court considered the distinction between additional work which is within the contract and additional work outside the contract.

FINDING

The court held that the additional works were contemplated by the parties and could not therefore be regarded as "extras" in the sense in which that word was used in the contract.

As they were not "extras", the claim of the contract that there was no necessity for them to have been ordered in writing was upheld.

QUOTE

Stawell CJ drew a distinction between extras within and extras outside such contract, saying:

"In contracts of this kind it may be impossible to ascertain the precise amount of work to be done, and it may be unavoidable to exceed the quantity of work in the specification...

We think that in a contract of this kind, framed in the terms containing the provisions this does, and where obviously the additions are of the same kind of work, although it may cause the whole sum to be exceeded, yet it is not an extra outside the contract."

Additionally, Stawell CJ defined extras as "works which are not contemplated by the parties at the time of execution of the contract and are not provided for."

IMPACT

When considering a claim for extras it is necessary to ascertain the precise nature and extent of the work which the contractor has undertaken to perform under the original contract.

Jim Doyle
1800 888 783
jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com