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BAULDERSTONE HORNIBROOK PTY LTD V QANTAS AIRWAYS LTD [2003] FCA 174

Federal Court of Australia – 11 March 2003

FACTS

Qantas Airways Ltd ("Qantas") entered into a contract with Baulderstone Hornibrook Pty Ltd ("BHPL") for the building project known as the Domestic Infrastructure Terminal Development at a price of $52.6 million. The works involved the extension of Domestic Terminal 3 at Melbourne Airport including the construction of an extension to the existing terminal building; the construction of a new valet car park and the construction of a new concourse.

BHPL claimed that from the time of commencement of work it encountered a series of difficulties in obtaining sufficient access to carry out its works, resulting in the project being delayed and the works substantially disrupted. BHPL claimed that it was entitled to rely on the dates in the construction program which was approved by the Superintendent. Qantas contended that the program was a statement of intention and made vigorous attempts to ensure that BHPL's extensions of time were not granted by the Superintendent.

BHPL claimed damages for breach of an implied term of the contract that Qantas improperly interfered with the Superintendent's duty to act impartially and independently by failing to certify the proper amount due for delay and disruption damages.

ISSUE

Superintendent's duty to act impartially.

FINDING

The Court found that the Superintendent had acted impartially and independently.

QUOTE

Finkelstein J at paragraph 99 concluded on the Superintendent's duty to act impartially:

"... I am satisfied that he did in fact carefully consider the extension of time claims and resolved them on what he regarded to be their merits, without being influenced by Qantas'... urgings that the claims be rejected. Indeed, [the Superintendent] was sufficiently sympathetic to BHPL's plight that, notwithstanding his view that BHPL was not entitled to all the extensions sought, he exercised his discretion under clause 9.05 to grant an additional 26 days extension in excess of what he believed to be its only entitlement. In these circumstances I am not able to ignore [the Superintendent's] certificate and will not myself undertake an assessment of the extension claims."

As to the construction program Finkelstein J said at paragraph 58:

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"It is that there is a significant risk of delay and disruption inherent in every major construction project. Numerous things can go wrong at any one of the many stages between the planning and completion of construction. Things may be overlooked; mistakes can be made; climatic and physical conditions may not be as expected; contractors, suppliers or agents may not meet their obligations, to name just a few. It is inevitable that time will be taken up with these matters and costs will be incurred. For this reason, a works program, especially a program which is not contractually binding may, when prepared by a contractor, be little more than a statement of intention or a statement that the contractor will use his best endeavours to comply with it. If prepared by an owner, a works program may be more than a statement of expectation; it may be said to contain a timetable which is regarded as feasible. But, in each case, the program will always be regarded as subject to the ever-present risk that the project may be delayed or disrupted for a myriad of reasons, including reasons that may be beyond the control of the parties."

IMPACT

A Superintendent must carefully consider and resolve a Contractor's claim on its merits and must not be unfairly influenced by the Principal.

Further, a construction programme is likely to be considered by the Courts as a statement of intention or expectation rather than a contractually binding timeframe.

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