

**COBRAM LAUNDRY SERVICES V. MURRAY GOULBURN CO-OPERATIVE CO LTD [2000]
VSC 353**

Supreme Court of Victoria– 7 September 2000

FACTS

In 1990 Cobram commenced a commercial arrangement for the provision and laundering of employee uniforms for Murray's.

In 1993, the parties entered into a new contract for 3 years for the same scope of work but included a clause 7 into it. Clause 7 provided that Cobram would continue to supply and service items for Murray for three years and thereafter continue to do so indefinitely until a notice of termination was issued by either parties.

In 1996 the parties entered into a new contract for the similar scope of work and clause 7 was inserted into the contract.

In 1998 the parties agreed to amend the 1996 contract to include new price schedule for certain items and extend the contract for 6 years but stated that all other terms and conditions should remain unaltered. In December 1999 Murray's gave a three months' notice of termination. Cobram treated the termination as a repudiation of contract and sued for damages.

ISSUES

1. What were the expressed arrangement and expectations of the parties?
2. Could Murray exercise its right to terminate the contract pursuant to clause 7?

FINDINGS

The parties wished to revise their fee structure during the life of the 1996 contract and they wished to extend the contract during its life for a three-year term ending November 2002. When the parties effected the 1998 amendment they rejected the entitlement of either party to terminate on three months' notice to the other party.

Therefore clause 7 was treated as being severed from the amended contract and the 1998 contract was treated as a new contract.

Murray was therefore not entitled to terminate the contract based on the termination right pursuant to clause 7. Cobram was therefore entitled to damages calculated on the basis of net profit that would have been made if the contract had continued until 2002.

QUOTE

Warren J said:

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“In commercial transactions the court should strive to give effect to the parties’ expectations, notwithstanding that there are areas of uncertainty and that particular terms have been omitted or not fully worked out. ... Wherever an expression is found in an instrument which is inconsistent with the real intention of the parties, as it appears from the language of the instrument, it is to be rejected as superfluous.”

IMPACT

Original terms of contract have to be interpreted consistently with terms of contract that are extended or an option to renew is exercised. If an expression in an instrument is inconsistent with the real intention of the parties as it appeared from the language of the instrument, then the expression should be rejected as superfluous.

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