CODELFA CONSTRUCTION PROPRIETRY LTD V STATE RAIL AUTHORITY OF NEW SOUTH WALES (1981-1982) 149 CLR 337

High Court of Australia - 11 May 1982

FACTS

Codelfa was contracted to perform excavations for an underground railway within in a fixed period. The parties had contracted under the misapprehension that construction work could proceed on a three shifts per day basis. An injunction obtained by local residents made this impossible.

The Construction Company claimed from the SRA an amount in addition to the contract price in respect of the additional costs incurred and the profit it lost from the resulting from the change in working methods it had been forced to adopt.

ISSUES

1. Was there an implied term that if Codelfa was restrained by injunction from working three shifts it would be indemnified by the SRA for additional costs?
2. Were the contracts between Codelfa and the SRA frustrated by the court Injunction?

FINDING

1. There was no implied term in the contract that if the company was restrained by injunction from carrying out the work in the manner desired, the Authority would extend the time for completion or indemnify it against loss suffered as a result.
2. As the performance of the contract was radically different from the performance expected by the parties the contract was frustrated by the injunction.

QUOTE

Mason J said:

"The true rule is that evidence of surrounding circumstances is admissible to assist in the interpretation of thencontract if the language is ambiguous of susceptible of more than one meaning. But it is not admissible to contradict the language of the contract when it has a plain meaning. Generally speaking facts existing when the contract was made will not be receivable as part of the surrounding circumstances as an aid to construction, unless they were known to both parties, although as we have seen, if the facts are notorious knowledge of them will be presumed."

"When the issue is which of two or more possible meanings is to be given to a contractual provision we look, not to the actual intentions, aspirations or expectations of the parties before or at the time of the contract, except in so far as they are expressed in the contract, but to the objective framework of facts within which the contract came into existence, and to the parties presumed intention in this setting. We do not take into account the actual intentions of the parties and for the very good reason that an investigation of these matters would not only be time consuming, but it would also be unrewarding as it would tend to give too

much weight to these factors at the expense of the actual language of the written contract." – page 352 of (1982) 149 CLR 337

IMPACT

Courts will consider extrinsic evidence in relation to unclear terms only to discover the presumed, not the actual intention of the parties. This can only occur when the term in question is ambiguous and not when it is capable of a clear meaning.

Also, if the performance of a contract relies on assumptions then the parties should consider how to deal with the assumptions being incorrect. This is particularly important with dealing with third parties and situations outside the control of the parties to the contract.