

COMMISSIONER FOR MAIN ROADS V REED & STEWART PTY LTD (1974) 131 CLR 378

High Court of Australia – 29 November 1974

FACTS

The Commissioner engaged Reed and Stewart to build part of an expressway in Sydney. The contract provided that Reed and Stewart were to take topsoil from the site and lay it around embankments. It was estimated that there would be sufficient top soil on the site to allow Reed and Stewart to layer the embankments, but the contract did provide that if there was a shortage of topsoil the contractor would be paid a good rate for each unit of topsoil.

The Commissioner's engineer, acting as contract manager, realised that the estimate of available topsoil was short and that the Commissioner would incur extra payments if it exercised its contractual power to order Reed and Stuart to supply extra topsoil to the site. He therefore arranged for another contractor to supply the topsoil.

Reed and Stewart sued for breach of contract.

ISSUES

Did the contract clause, which allowed the engineer to take work of the contractor also allow the engineer to give that work to another party? Did the contract clause, which provided that the engineer could direct the contractor to supply additional topsoil give the engineer an option to give that work to another party?

FINDING

The two clauses allowed the engineer to either direct Reed and Stewart to supply the topsoil at the extra rate and complete the works as anticipated or to order Reed and Stewart to not complete the work requiring the topsoil. The contract had been breached.

QUOTE

Stephens J said:

“Were he allegedly entitled to do so it would, I think, run counter to a concept basic to the contract, namely that the contractor, as successful tenderer, should have opportunity of performing the whole of the contract work. By the contract the contractor had covenanted that for the bulk sum of almost 5 million pounds it would perform the works and supply all the materials shown in the other contract documents.

That this included the placing of all topsoil called for by the contract drawings is clear from those drawings, from the definition of “works” in the general condition of contract and from the concluding words of clause A1.22 of the specification, which expressly includes in the contract work the placing of topsoil as shown in the contract drawings.” - page 282 of (1974) 131 CLR 378 “Clause 18 is a common enough provision to be found in engineering contracts and permits of the omission from time to time by the proprietor of portion of the contract works.

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What it clearly enough does not permit is the taking away of portion of the contract work from the contractor so that the proprietor may have it performed by some other contractor.” - page 303 of (1974) 131 CLR 378

IMPACT

A contract manager can not use a power to direct the contractor to not perform certain works under the contract and then allow another person to perform the work. The contract manager can not prevent or bar the contractor from performing work, which the parties have agreed the contractor will perform, by exercising a variation power.

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