

CONCUT PTY LTD V WORRELL [2000] HCA 64

High Court of Australia – 14 December 2000

FACTS

Concut had employed Worrell as a manager since 1980. There was no written employment contract between Concut and Worrell until 1 December 1986 when they executed a written document called a Service Agreement. The document stated that Worrell was an employee of Concut and that the document had been entered into to record the terms and conditions of the employment of Worrell.

On 1 December 1986, Worrell also purchased shares in Concut. The Service Agreement provided that Worrell was to be employed by Concut from 1 December 1986 to 30 November 1991. After 30 November 1991 either party could terminate the employment contract after giving three months' notice. On 1 February 1998, Concut terminated the employment of Worrell without any notice. It was later alleged that Worrell had before 1 December 1986 misused Concut's resources to build his own home. Worrell through his trustee in bankruptcy, Worrell, sued Concut for breach of contract.

ISSUE

The Court had to decide whether the original oral employment contract had been replaced by the written Service Agreement or only supplemented by the written Service Agreement.

FINDING

The Service Agreement did not indicate that the rights and liabilities which had accrued between the parties since 1980 would be displaced and the terms of the Agreement suggested that the parties intended that the Service Agreement would be a supplement to the existing employment contract and not replace it. Therefore, the implied term in an employment contract that allowed an employer to terminate the employment of an employee without notice if they were guilty of misconduct had not been removed by the terms of the Service Agreement and Concut had been entitled to terminate the employment of Worrell without notice.

QUOTE

Gleeson CJ, Gaudron & Gummow JJ said:

“In the present case, the dispute centres not upon these other aspects of the employment relationship, but upon the identification of the contractual source of the relationship over a fairly lengthy period. In our view, the majority of the Court of Appeal erred in treating the Service Agreement as a new and discrete contract of employment which had the effect of terminating and replacing the anterior oral agreement between Concut and Mr Worrell, and this error dictated an incorrect outcome to the appeal.”

IMPACT

When re-negotiating contracts it is important to consider the consequences of replacing an old contract with a new contract. If the parties intend to have the new contract replace the old contract, then that intention should be carefully stated in the new contract. Otherwise there is a risk that the terms of the old contract apply to fill any gaps in the new contract, and this may lead to undesirable consequences.

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