

Dualcorp Pty Limited v Remo Constructions Pty Limited [2008] NSWSC 749

FACTS:

Remo Constructions Pty Limited (“Remo”) was a contractor engaged on a development project at Five Dock and Dualcorp Pty Limited (“Dualcorp”) were the subcontractors on that project engaged to carry out demolition, excavation and piling works.

The dispute resolution clause in question purported to limit the parties right to seek relief from the courts in the event of a dispute, requiring the parties (on one view of its construction and interpretation) to adhere to a strict compliance with that expert determination clause to the exclusion of all other relief, save except judicial review in circumstances imprecisely defined.

ISSUE:

Whether the dispute resolution clause operates to limit the parties’ rights to litigate in circumstances where the dispute resolution mechanism is not properly and precisely drafted to reflect the parties’ intentions?

FINDING:

The Court found that the dispute resolution mechanism was so obscure [at 23, 26] and was so imprecisely drafted [at 22] that the court could not give effect to the clause to restrict the parties’ access to litigation in this case.

QUOTE:

McDougal J [at 22]

“In this case, I think, the words in question are so imprecise, and so devoid of any limitation (which, I repeat, they were clearly intended to have) that they cannot be given effect. ...”

[at 24] “...the parties were intending to suggest that once an expert determination had been concluded, it could only be reviewed by the courts on the very limited bases described in that case. But if this is the case, there is no requirement for leave, let alone for leave to appeal. If the requirement for leave to appeal is intended to be meaningful, it might suggest that the process of “judicial review” is in fact something far wider. If it is, the nature of the review and its limits are left to the imagination.”

IMPACT:

This case demonstrates the importance of careful drafting of expert dispute determination clauses in contracts, so as to achieve the parties’ objective of expeditious and inexpensive resolution.