

EASTERN METROPOLITAN COUNCIL V. FOUR SEASONS CONSTRUCTION PTY LTD
[1999] WASC 167

Supreme Court of WA – 9 September 1999

FACTS

The Council and Four Seasons entered into a building contract that included an arbitration clause.

A dispute arose between the parties and the dispute was referred to arbitration.

An attempt by the Council to stay the arbitration was unsuccessful.

The arbitrator sent a letter to the parties setting out a tight timetable for the conduct of the arbitration. However, the letter did not set out how the arbitrator intended to approach the arbitration. In particular, the letter did not indicate whether the arbitrator intended to decide the dispute on the papers or conduct a hearing.

The Council was also concerned that Four Seasons had not served adequate Points of Claim.

ISSUES

Should the Court make orders as allowed by section 47 of the Commercial Arbitration Act in relation to interlocutory aspects of the arbitration or stay the arbitration until adequate Points of Claim had been served on the Council?

FINDING

The arbitrator should be first given a chance to address the concerns of the Council before the Court considered making supervisory orders. The application was adjourned for seven days.

QUOTE

Master Sanderson said:

“I think that two things arise out of s 47. First, it must be read in conjunction with s14 [of the Commercial Arbitration Act] so that it is not the function of the court to simply take over the conduct of the interlocutory proceedings of the arbitration and ignore the way in which the arbitrator intends to approach the reference.

Rather it seems to me, that the power is a supervisory power that should be exercised only so far as it is necessary to ensure that the arbitration proceeds in a proper manner. ...

Without going through the authorities, it is clear that there is a broad supervisory power in the Court which should be exercised if it becomes apparent that the arbitration is proceeding in a way which is likely to give rise to an application to set aside the award.”

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IMPACT

An arbitrator is subject to supervision by the Court.

However, the Court will only exercise its supervisory powers if necessary to ensure that the arbitration is run properly and that no issues will arise which could lead to an application to set aside the award of the arbitrator.

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