

**ELECTRONIC INDUSTRIES LTD V DAVID JONES LTD [1954] 91 CLR 288**

High Court of Australia, 26 November 1954

**FACTS**

Electronic Industries Ltd ('Electronic') entered into a contract with David Jones Ltd ('David Jones') for the installation of television equipment and to give demonstrations of television for 12 days to provide an attraction which would draw customers to the store. Before the commencement date the parties had fixed, a serious coal strike began in New South Wales, which resulted in a considerable falling off in the number of shoppers coming into the city. On that basis, David Jones decided that it had become "most inopportune" to proceed with the display of television. Electronic was informed of the situation and asked if it would postpone the demonstration until another date could be fixed. David Jones stated that after the strike was over it would require two or three weeks for the store to become sufficiently busy and that it would take two or three weeks more to carry out the arrangements for the exhibition. Electronic proposed another date in line with David Jones' advice.

David Jones responded, after the original commencement date, indicating that David Jones wished to postpone any fixed date for the intended television show in the store. Electronic agreed to the postponement. Electronic then requested David Jones indicate dates and time to enter the store to comply with its obligations. David Jones declined to proceed with the television show at such a late date as such an attraction would overcrowd the store.

Electronic treated the contract as repudiated by David Jones and sued for damages. David Jones submitted that due to the removal of the fixed date, upon which the contract depended, it should be inferred that the contract was uncertain and insufficient to form a binding and enforceable contract.

**ISSUE**

Whether David Jones were obliged to set a time for the actual performance of the contract.

**FINDING**

The High Court of Australia held that David Jones was obliged to set a reasonable time for Electronic to enter the premises to comply with their obligations.

**QUOTE**

Dixon CJ, McTiernan, Webb, Kitto and Taylor JJ said the following (at 297-298):

*"... The fact that there was no longer a fixed date for performance brought into application the principles which impose on parties, in all cases where the performance of their obligations requires co-operative acts, the duty of complying with reasonable requests for performance made by the other..*

*... By any appropriate demand the plaintiff was entitled to require the defendant to make its store available to the plaintiff to perform its obligation at some proper and reasonable time. It is hardly necessary to repeat*

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle  
1800 888 783

[jdoyle@doylesconstructionlawyers.com](mailto:jdoyle@doylesconstructionlawyers.com)  
[www.doylesconstructionlawyers.com](http://www.doylesconstructionlawyers.com)

*the common place statement that what is reasonable depends on all the circumstances including the nature and purpose of the express stipulations. ...*

*Example after example could be given of commonplace contracts for the performance of work or the rendering of services where one man must make himself or his premises or his goods available to another at some mutually convenient time which is left unfixed or if fixed is allowed to pass. A contract to tailor a suit of clothes, to decorate the interior of a building or to repair a ship's hull is not unenforceable because no time is fixed for the attendance of the customer upon the tailor or for the commencement of the decorator's work or for the entry of the ship into a dry dock when it may become available..."*

## **IMPACT**

This case stands for the proposition that if action is required to bring about the intended result, each party has the duty of complying with the reasonable requests made by the other to ensure the intended result is achieved.

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle  
1800 888 783

[jdoyle@doylesconstructionlawyers.com](mailto:jdoyle@doylesconstructionlawyers.com)  
[www.doylesconstructionlawyers.com](http://www.doylesconstructionlawyers.com)