

FERNKILN P/L V AUST BUILDING IND P/L [1999] QCA 179

Queensland Court of Appeal – 25 May 1999

FACTS

Australian Building Industries owned land in Townsville that it proposed to develop as a commercial site. Fernkilyn was a roofing manufacturer that was interested in leasing a purpose-built building in Townsville. Australian Building Industries gave Fernkilyn a design and construct proposal to construct the building and lease it to Fernkilyn. Fernkilyn responded by sending Australian Building Industries a letter of intent that proposed terms for a lease. The solicitors for Australian Building Industries send a counter offer about the terms of the lease. No contract documents were signed and eventually Fernkilyn decided it no longer required the building. In the meantime, Australian Building Industries had with the knowledge of Fernkilyn commenced building works on the property and spent \$300,000.00 on the works.

Australian Building Industries completed the building and sued Fernkilyn for breach of contract and alleged that Fernkilyn was estopped from denying there was a contract.

ISSUES

Was there a binding contract between Australian Building Industries and Fernkilyn?

If there was no contract was Fernkilyn estopped from denying the contract because of its actions in allowing Australian Building Industries to work on the site?

FINDING

The Court held that there was no binding agreement between the parties as there were still outstanding matters of importance to be agreed between the parties and the parties had intended to be only bound after the execution of a formal agreement.

The Court held that the facts did not prove that Australian Building Industries had relied upon conduct by Fernkilyn to assume that there was a contract between the parties.

The evidence suggested that Australian Building Industries had simply commenced work and hoped that it could negotiate a contract with Fernkilyn.

QUOTE

Pincus J.A. said

“It may be thought that there are two opposing considerations: one, that courts should not presume to make or complete parties’ bargains, and two, that courts should not always let a parties’ reasonable understanding, encouraged by the other side, that a contract has been or will be made be disappointed by a refusal to fill in gaps.” paragraph 4 of [1999] QCA 179.

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IMPACT

When negotiating contracts, it is important to ensure that a formal contract has been agreed between the parties before commencing work OR that the party doing the work has received a written acknowledgment of liability to pay for work completed from the other party.

While it may be convenient to commence work before the execution of a contract there is a risk that the negotiations will be unsuccessful and payment for any work dependent on the good faith of the other party or a successful legal proceeding.

Clearly this is not satisfactory for either party.

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