

Haissam Assafiri v The Shell Company of Australia [2010] NSWSC 93017 May 2010 18 August 2010.

FACTS:

Haissam Assafiri (“the Plaintiff”) issued proceedings against The Shell Company of Australia (“the Defendant”) on the basis over a dispute between the parties as to the extent and quality of the work which had been performed.

During the proceedings the Plaintiff sought to adduce and rely upon the evidence of an architect, which was objected to by the Defendant on the basis that, among others, that he was not suitably qualified in his area of expertise to provide an expert report in legal proceedings.

A further point of objection taken by the Defendant was as to the structure and methodology outlined in the report produced by this witness.

ISSUES:

Whether the Plaintiff’s witness could provide expert opinion evidence in a form which it is contended does not demonstrate an intellectual basis or methodology to reach the conclusions expressed in the report?

FINDING:

The Supreme Court found this particular witness was adequately qualified to give an opinion on the matters in question however the opinion he gave in his report was poorly structured and did not reveal how the witness had arrived at his conclusions.

QUOTE:

McDougall J [at 4]:

“There is some debate as to whether demonstration of a logical chain of reasoning based on the application of expertise to assumed or observed facts leading to the conclusions expressed is condition of validity or a question of weight – see, in the Court of Appeal, Makita (Australia) Pty Ltd v Sprowles [2001] NSWCA 305; and in the Full Court of the Federal Court of Australia, The Sydney Wide Distributors Pty Ltd v Red Bull Australia Pty Ltd (2002) 55 IPR 354; [2002] FCAFC 157. If it were necessary to express a view, it would probably be appropriate to follow the guidance offered by Heydon JA I the former case.

But in my view, it is not necessary to do so because even if the report were technically admissible (and I have grave doubt that it is) the total want of any rational reasoning process requires that it be rejected under s 135 of the Evidence Act 1995 (NSW).”

IMPACT:

The case illustrates that it is important to ensure that the reports produced by expert witnesses in litigation strictly comply with the requirements of the Court and demonstrate the basis of the opinion evidence given.

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Parties to litigation who intend to rely on expert opinion evidence are well advised to ensure that the quality of the expert assists and persuades the Court.

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