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JOHNSON MATHEY LTD V. AC ROCHESTER OVERSEAS CORPORATION - (1990)

Supreme Court of New South Wales – 13 December 1990

FACTS

The parties were involved in contractual relationship to supply car parts for installation in motor vehicles manufactured in Australia. The parts were to be coated in Australia to take advantage of Commonwealth government policy which provided financial incentives for motor vehicle manufacturers to use locally produced parts.

On 19 February 1990, ACOC, the defendant, gave notice to JM that the agreement would end as JM had failed in the reasonable opinion of ACOC to be competitive with other suppliers of the coated parts on the basis of price, with all other terms and conditions being equivalent. It was common ground that the competitive prices used by ACOC in forming its opinion were prices of coated parts from sources in the United States. JM challenged the termination on the basis that it was the only with another supplier of substrate coated in Australia that comparison could be made for the purposes of ACOC's right to give notice.

Reliance was placed on negotiations between the parties before the contract was entered into to show that ACOC was estopped from denying that the right to terminate was to be made using the prices for Australian coated parts.

ISSUES

Could evidence of pre-contract negotiations to be used to amend the language of the written contract?

Was there an implied term in the contract that the right of ACOC to terminate on the basis of price was to be exercised using the prices for Australian coated parts?

FINDING

The parole evidence rule operated to exclude JM leading evidence about an alleged estoppel by convention arising from pre-contract negotiations.

However, it was an implied term in the contract that the right of ACOC to terminate on the basis of price was to be exercised using the prices for Australian coated parts.

QUOTE

McLelland J said:

"In substance an estoppel by convention is in the nature of an agreement. There is no less reason in principle that such an agreement be treated as superseded by the subsequent written contract than that any other agreement arrived at during pre-contract negotiations be so treated. Furthermore, it would be

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subversive of the policy on which the parol evidence rule is founded and would unduly shake the security of contracts, if proof were permitted of such alleged estoppels ...

It would be a serious threat to the stability of commercial relationships and dealings if parties, who after lengthy and intricate negotiations, deliberately recorded their agreement in permanent written form, were subject to the risk of having that permanent written record yield to the inherently less reliable evidence of oral statements made during the course of negotiation, given possibly many years after the event when witnesses may have become unavailable and when memories may have faded or become distorted by subsequent occurrences and changing perceptions of self-interest". – page 195 of (1990) 23 NSWLR 190

IMPACT

The parole evidence rule may operate to exclude evidence of an estoppel which may arise in pre-contract negotiations if the contract is clearly the entire agreement between the parties.

Parties to contracts should however ensure that the terms of the contract are as clear as possible especially if a term is important to one party.

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