

KATHERINE PTY LIMITED V THE CCD GROUP PTY LTD [2008] NSWSC 131

Supreme Court of New South Wales 18 February 2008

FACTS:

Katherine Pty Ltd (“Katherine”) engaged The CCD Group Pty Ltd (“CCD”) to undertake certain construction works on 3 projects across the eastern states of Australia.

A dispute arose, and CCD issued payment claims in respect of the three various projects, of which the adjudicator (the second defendant), found in favour of CCD whereby he determined that Katherine was indebted to CCD in the amount of \$340,000, of that amount some \$240,000 related to interest calculated at the rate of 9 percent per month compounding.

Katherine (as the first plaintiff) thereafter sought relief from the Supreme Court under the Trade Practices Act 1974, submitting that the contractual rate of interest awarded to CCD was a penalty and therefore unconscionable.

ISSUES:

Whether the default interest provision in the ASOFIA contract executed in this case, was a penalty provision and therefore unconscionable in the terms of the Trade Practices Act 1974?

FINDING:

The Court found that the rate of interest sought was a penalty provision and therefore ordered that the adjudicated amount, except for the interest ordered, should be payable by the defendant.

QUOTE:

McDougal J [at 40]

“As I have indicated, I think it was clearly foreseeable, at the time each of the contract was made, that if the plaintiffs did not pay, the defendant might incur interest or additional interest expense. However, on the evidence, the rate of those interest expenses is not within even a remote distance of interest according to the contractual rate when the two are put on a comparable basis.”

IMPACT:

The case illustrates the need for careful drafting of default interest provisions in relation to construction contracts and also promotes moderation in interest rates as legal costs may exceed the extra interest.