

LANDORO PTY LTD V. JENSEN PTY LTD APPEAL NO: 5783 OF 1998

Court of Appeal – QLD – 20 August 1999

FACTS

Landoro entered into a sub-contract with Jensen for work at the Brisbane Casino and Hotel site. Landoro told Jensen that it had cash flow problems and needed to be paid promptly.

Jensen later agreed to pay \$185,000 to Landoro for accelerating the work, and Jensen was told that the acceleration would strain the financial resources of Landoro. Landoro went into administration after Jensen refused to pay for variations or for the acceleration.

Landoro issued legal proceedings against Jensen for breach of contract and misleading and deceptive behaviour.

ISSUE

Landoro wanted to amend its claim to include in its claim for damages to include the costs incurred by Landoro in going into administration and its costs of getting finance for litigation.

FINDING

While the claim for costs incurred by Landoro going into administration and getting finance were unusual, the court found that the claims were arguable and allowed the amendments to the claim for damages.

QUOTE

Davies JA said:

“As to the claims for administration costs generally and, specifically in overseeing this litigation, as damages for breach of contract, I agree with what Demack J has written.

Central to both of these claims, and indeed also to the claim for the costs of litigation finance, is the allegation, in effect, that the respondents knew that unless the appellant was paid promptly for the work or acceleration, it would be unable to continue to operate and, it follows, might have to reach an agreement with its creditors of the kind which it did.

Moreover, as Demack J points out, in effect, there is no difference in kind between damages of the first category and those of the second. And it may also be said of both that they were steps taken in order to mitigate greater loss.” “Those or similar arguments may, in my view, also be advanced to support recovery of the cost of litigation finance.

The respondents’ breaches caused the money to be owing; and, if they knew that Landoro would be unable to operate without that money, it is arguable that they must have known that, in that event, it would be

unable to finance litigation to recover it either from its own resources or through ordinary avenues of borrowing.

This argument assumes, as the appellant has contended, that litigation finance comes at a higher price than ordinary business loans. It is the extra cost of that finance, caused by the appellant's foreseen impecuniosity, which is arguably recoverable".

IMPACT

This decision suggests that if a principal knows that a contractor is having cash flow problems, and promises to pay money owing promptly, a claim for breach of contract or misleading and deceptive conduct may include damages for any insolvency costs of the contractor.

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