

LEIGHTON CONTRACTORS PTY LTD V EAST GIPPSLAND CATCHMENT AUTHORITY
[2000] VSC 26

Supreme Court of Victoria – 18 February 2000

FACTS

Leighton was retained by the Authority as a consultant and superintendent for flood response works.

The contract between the parties was drafted by employees of the Authority and included provisions about progress payments.

The contract provided that the Authority was to make progress payments to Leighton and could only withhold progress payment if the progress claim was disputed.

The Authority alleged that certain works supervised by Leighton were defective and withheld payment of progress payments until the work was rectified. Leighton sued the Authority and applied for summary judgment.

ISSUES

Was the Authority entitled to withhold payment of the progress payments?

Should the Court order that summary judgment be granted for Leighton's claim for payment of the progress claims?

FINDING

The contract clearly provided that the Authority could only withhold payment of progress payments if there was a dispute about the contents of the progress claim.

Nothing in the contract indicated that the Authority had lost its right to defend a claim by Leighton by counter claiming for a related loss. The summary judgment would not be granted and claims by both parties would proceed to a trial.

QUOTE

Byrne J said:

"It is therefore necessary to consider whether these rights of an ordinary litigant have been removed or deferred by agreement between Leighton and the Authority.

At this point I repeat that the agreement contains no such express term....First, we are not here concerned with the right to withhold payment of a progress claim, but with the different question, whether the defendant to an action on the claim has lost the right to raise certain defences.

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com

The second is the argument depends upon an inference starting from the fact that certain deductions are permitted and leading to the conclusion that no others are permitted.

It is clear ... that the removal of the right to defend requires something more explicit than an inference of this kind.”

IMPACT

Contract provisions covering progress claims and payments should be clearly drawn and understood by the parties to mean that progress payments should not be withheld without good cause.

However even if the rights of the principal to withhold payment are limited, the principal will still be entitled to raise a counterclaim during proceedings by a contractor to be paid for progress claims, unless the contract clearly indicates that the principal is not entitled to raise a counterclaim as a defence to a progress claim proceeding.

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com