

PERUM BUILDING & CONSTRUCTION PTY LTD v TALLENFORD PTY LTD [2007] WASCA 245

Western Australia Court of Appeal 2 November 2007

FACTS:

Perem Building & Construction Pty Ltd (“Perem”) engaged Tallenford Pty Ltd (“Tallenford”) to construct a sewer line to connect their development site to the main sewer line. In undertaking the work, a subterranean hole was bored at a level of at least 0.3 metres too high from the connection to the main line, thereby requiring a new hole to be bored below the first. The costs associated with the second hole were higher due to dewatering which was required to be undertaken.

Tallenford sought to recover the costs of digging the second hole from Perem claiming that the site plan was wrongly drawn. Perem refused payment on the basis that the contract stated, inter alia, that ‘levels are approximate’ and that the contractor would do all things necessary to make the sewer connection.

ISSUES:

Whether Tallenford were entitled to payment for the additional work of digging the second sewer, or whether the work undertaken by Tallenford only fell within the original contract sum and therefore they were not entitled to any further payment?

FINDING:

At first instance Court found that Tallenford were only entitled to the difference between the cost of original bored hole and the second bored hole, and not the total cost of the second hole.

On appeal the Court of Appeal found that Tallenford were not entitled to any additional payment for the work undertaken on the second hole.

QUOTE:

Steytler P, Buss JA, Newnes AJA [at 20]

“The point that is determinative of this appeal is...a fundamental one in relation to restitutionary claims in respect of claims for work done, namely, that no claim can be brought for restitution which is inconsistent with a valid and enforceable contractual promise between the parties...”

[at 22] “...once it was found that the respondent had contracted to install the sewer line from the development to the main sewer line (rather than simply carry out certain specific work), it necessarily followed that the respondent’s entitlement to payment for installing the sewer line fell to be determined under the contract.”

IMPACT:

The case illustrates the importance of understanding the terms of the contract, clearly defining the nature of the contract, the scope of work, and also underlines the importance of negotiation of the contract terms ensuring that there are adequate provisions to accommodate latent conditions, variations or misdescriptions.

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