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QUEENSLAND ICE SUPPLIES PTY LTD V ANCO AUSTRALASIA PTY LTD [2000] QSC 72

Supreme Court of Queensland – 31 March 2000

FACTS

Queensland Ice manufactured and sold ice products in Queensland and operated two ice making machines which were serviced by one condenser.

Anco was engaged by Queensland ice to treat the water in the condenser but the condenser itself was cleaned by an employee of Queensland Ice. The employee who cleaned the condenser left the employ of Queensland Ice in late 1997 and Queensland Ice engaged Anco to clean the condenser as well as treat the water.

On 26 November 1997, Rennie, a casual employee of Anco, attended Queensland Ice's premises and treated the water and apparently cleaned the condenser. On 15 December 1997, one ice making machine failed and on 18 December 1997 both ice making machines failed and attempts to fix the machine were unsuccessful. On 21 December 1997, the director of Queensland Ice managed to fix the ice making machines cleaning the strainer in the condenser.

Queensland Ice sued Anco for negligence and breach of contract and claimed that Rennie had failed to clean the strainer when he cleaned the condenser. The Court found that Rennie had failed to clean the strainer in November 1997. Queensland Ice were unable to manufacture ice for six days and lost some major customers due to its inability to supply enough ice.

ISSUES

Was Queensland Ice guilty of contributory negligence by taking six days from the date of the failure of the ice making machines to inspect and then clean the strainer?

Was the failure of Anco to clean the strainer the cause of the loss to Queensland Ice or was Queensland Ice's failure to promptly identify the problem with the strainer

FINDING

Queensland Ice sued Anco for both breach of contract and negligence. Contributory negligence is not a defence to an action for breach of contract. The delay in inspecting and cleaning the strainer was a cause of the financial losses suffered by Queensland Ice and this loss would not have occurred but for the breach of contract by Anco.

QUOTE

Chesterman J said:

"It is no doubt right that had Mr Bradley looked for the cause of the high pressure in the operation of the condenser or, more particularly, at the strainer he would have discovered it was blocked and cleaned it in

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time to avoid the sever disruption to its production which the Plaintiff suffered in the week 15 to 21 December. Applying the "but for" test it may be said that Mr Bradley's failure to look at and clean the strainer was the cause of the disruption and subsequent loss.

It remains equally true that "but for" the defendant's failure to clean the strainer in November there would have been no disruption and loss. There are two concurrent causes of the loss. In these circumstances I do not apprehend that the law requires a Plaintiff to prove that the breach of contract was the "dominant" or the "effective" cause. It is enough if it was a cause of the loss, or put differently, that the breach of contract causally contributed to the loss."

IMPACT

This case is an example of a defendant being liable for both breach of contract and negligence and not being able to rely on the contributory negligence of the plaintiff as a defence to the breach of contract action.

The failure of Queensland Ice to properly inspect the condenser when the ice making machines broke down has held not to have broken the causal link between the breach of contract and the losses suffered by Queensland Ice.

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