

SJP FORMWORK (AUST) PTY LTD V LEDA CONSTRUCTIONS PTY LTD (1992) CLD55021 OF 1991

Supreme Court of NSW – 19 May 1992

FACTS

The Plaintiff was a sub-contractor for the defendant on three projects. The subcontract agreement was not in writing.

The Plaintiff claimed more money from the Defendant and the Defendant denied liability to pay any more money and cross-claimed for the defective work and delay. Court proceedings were referred for a report by a referee. The referee decided the Plaintiff was entitled to a sum in excess of \$350,000.00 and dismissed the claims by the Defendant.

The Defendant claimed that the Referee had failed to take evidence into account or had given too much weight to insignificant evidence.

ISSUES

The court had to decide whether the referee had erred in the decision he made. The Plaintiff alleged that the findings of fact by the referee were made against the weight of evidence.

FINDING

The findings of fact by the referee were reasonable and not contrary to the evidence. Therefore, the referee's report was adopted by the Court.

QUOTE

Giles J said

“The report is a well reasoned report. It leaves me with satisfaction that the referee has carefully applied his mind to the findings of fact required of him, a feeling of satisfaction that is confirmed by the occasions earlier mentioned on which I was taken to the evidence before him, and I do not think that the whole purpose of the reference should be rendered futile by my acceding to the invitation to go to the evidence and make up my own mind, possibly with conclusions different from those to which the referee came.” – page 9 of CL55021 of 1991 “I’m not persuaded towards rejection of the referee’s report because of a deficiency in reasons or a failure to pay regard to some of the materiel before the referee, but rather am confirmed in the reliability of the referee’s conclusions.” – page 11 of CL55021 of 1991

IMPACT

Courts will not intervene with the decisions of a referee unless there is a clear breach of the duty of a referee to act impartially, a clear error of law, or it is clear that the findings of fact could not be supported by the evidence.

To do otherwise would render the purpose of the referee reporting to the court futile.

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