

SWF HOISTS & INDUSTRIAL PTY LTD V WOOLCOCK ENGINEERING PTY LTD [1999] SASC 353

Supreme Court of South Australia – 31 August 1999

FACTS

SWF agreed to design, manufacture, deliver, install and commission three travelling cranes for Woolcock. The relevant contract said that delivery was to occur within eight to ten weeks.

The cranes were not delivered within the ten weeks. SWF claimed that the late delivery was due to Woolcocks failure to have runaway beams aligned to within acceptable tolerances and therefore it was impossible to install the cranes. The contract provided that Woolcock was responsible for the runaway beams. SWF issued proceedings to recover payment for the work on the cranes. Woolcock claimed that the late delivery of the cranes was a breach of contract and SWF was not entitled to be paid for its work.

ISSUE

Was the term of the contract that provided that SWF would deliver the cranes within the ten weeks conditional on Woolcock discharging its contractual responsibilities with the runaway beams?

FINDING

The obligation of SWF was to design, manufacture, deliver, install and commission the cranes.

It was not simply an obligation to deliver the cranes. SWF could only install the crane when Woolcock had properly installed the beams.

QUOTE

Prior J said:

“The magistrate could not properly consider the case on the basis that the appellant’s obligation was limited to the delivery of cranes to the site. The contract extended to an obligation to install, commission and test the cranes. The appellant’s contractual obligations were subject to the respondent meeting its obligations.

Where each party’s obligation “is conditional on performance by other, neither can complain of non-performance by the other when the condition governing the other’s obligation goes unfulfilled.” – paragraph 10 of [1999] SASC 353

“The evidence clearly established that the appellant’s obligation to install was incapable of being discharged within the time specified for delivery.

Thus the respondent was not entitled to complain of the failure to deliver within 10 weeks because it had failed to provide runway beams in a position to take the cranes as initially specified with a span of 24.550 metres.” – paragraph 11 of [1999] SASC 353

IMPACT

When each party to a contract has obligations conditional on the other party performing neither party can complain of non- performance if the time limits are not fulfilled.

If a particular time limit is important the parties should ensure that the contract specifies that the time limit is not dependant on external events.

© 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