

SECURED INCOME REAL ESTATE (AUST) LIMITED V. ST MARTIN INVESTMENT PTY LTD
(1979) 144 CLR 597

High Court of Australia – 12 October 1979

FACTS

The Supreme Court of Queensland dismissed a claim for damages for breach of an implied term in a contract for the sale of an office building. The alleged implied term provided that the purchaser would actively co-operate with the vendor, to the extent reasonable necessary, in efforts to secure tenants and that it would not obstruct such efforts. The contract provided that the purchaser had to approve tenants of the office building, with approval not to be withheld capriciously or arbitrarily.

The vendor claimed that the purchaser was in breach of the implied term by rejecting the vendor as a tenant of unlet space in the office building. The effect of the purchaser's refusal was that the purchase price remaining to be paid to the vendor was reduced as lease income for the building has not reached a specified figure.

ISSUES

The court had to decide whether there was an implied term in the contract that the purchaser would actively co-operate with the vendor to secure tenants for the office building.

FINDINGS

There is a rule of contract interpretation that a duty to co-operate in the performance of the contract by the parties or one of them of fundamental obligations under a contract will regularly be implied.

However, when the obligations in question, though necessary to entitle the other party to a benefit under the contract but are not essential to the performance of the contract, the correct interpretation of the contract depends not so much on the general rule of contract interpretation but on the intention of the parties manifested by the contract itself.

QUOTE

Mason J said

“It is easy to imply a duty to cooperate in the doing of acts which are necessary to the performance by the parties or by one of the parties of fundamental obligations under the contract. It is not quite so easy to make the implication when the acts in question are necessary to entitle the other contracting party to a benefit under the contract but are not essential to the performance of the parties obligations and are not fundamental to the contract.

Then the question arises whether the contract imposes a duty to cooperate on the first party or whether it leaves him at liberty to decide for himself whether the acts shall be done even if the consequence of his decision is to disentitle the other party to a benefit.

© 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

In such a case, the correct interpretation of the contract depends, as it seems to me not so much on the application of the general rule of construction as on the intention of the parties as are manifested by the contract itself.” – page 607 of (1979) 144 CLR 597

IMPACT

Courts will imply terms into contracts to facilitate the performance of the contract only if this can be supported by the intention of the parties as manifested by the contract itself.

In this case the contractual right for the purchaser to refuse to accept a tenant had been properly exercised as the purchaser had concerns about the ability of the vendor to pay rent.

© 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