

SIR LINDSAY PARKINSON & CO LTD V CMRS OF HIS MAJESTY’S WORKS AND PUBLIC BUILDINGS [1949] 2 KB 632; [1950] 1 ALL ER 208

FACTS

Sir Lindsay Parkinson & Co Ltd (‘Parkinson’), as Contractor, entered into a Contract with the Commissioners of His Majesty’s Works and Public Buildings (‘Commissioners’), as Principal, for the construction of an ordnance factory. Under the contract the Principal had the absolute power to order alterations or additions to the works, and it was the duty of the Contractor to comply with the Superintendent’s instructions.

The Principal ordered works far in excess of the amount so contemplated (originally \$3,500,000 with \$500,000 in bill of quantities and the actual cost was \$6,683,056), although not different in character, and as a result the work was not completed until a year beyond the anticipated date. The Contractor and Principal in this case entered into a deed of variation (for acceleration of the works) and Principal estimated a cost of \$5,000,000.

The Contractor had complained to the Principal that it was being called on to execute more work in excess of that contemplated by the varied contract and claimed extra remuneration for work in excess of that contemplated. The Contractor proceeded with the work at the request of the Principal, leaving the issue to arbitration.

ISSUE

The question for decision was whether there was an entitlement to additional remuneration where the work was nominally at least performed pursuant to the contract but was of such a nature as to render the contract something different from that originally contemplated.

FINDING

The Court commented that it was absurd to suppose that such a large increase as in fact occurred was within the contemplation of the parties. The Court found that the work actually performed was similar in kind to that required pursuant to the contract.

However, the Court implied a term into the Contract that the Principal should not be entitled to require work materially in excess of the \$5,000,000 estimated. That is, the Court construed the Contract in such a way to place an intended monetary limit upon the value of such extra work to be performed. Thus, there was either an implied term limiting the amount of extra work to a fixed value or an ascertained limitation by reference to the proper construction of the contract. Therefore, the Court held that such excess work having been done by the Contractor at the request of the Principal, the Principal is liable to pay the

Contractor’s reasonable remuneration. The Court based its decision upon a construction of the contract and held that the construction must be such as to exclude the extra work performed from its ambit thus leaving the extra work to be recovered pursuant to quantum meruit.

QUOTE

Cohen LJ at page 224 and 225 held:

“The work executed so far exceeded the stipulated work, that is to say, the work comprised in the original estimate of £4 million that it seems to me, to use the language of counsel for the commissioners, fantastic and absurd to suppose that such a large increase as, in fact, occurred was within the contemplation of the parties when the deed of variation was executed. We are, I think, amply justified (a) in reaching the conclusion that the basis of the varied work measured approximately by the said sum of £5 million, and (b) in implying a term that the commissioners should not be entitled under the contract to require work materially in excess of that sum.

It follows that, such excess work having been done by the contractor at the request of the commissioners, the commissioners are liable to pay the contractor reasonable remuneration therefore.”

IMPACT

This case stands for the proposition that where the work is fundamentally different from that contracted for far exceeds the extent contemplated, but the contractor undertakes it as directed, the contractor may be able to assert that he or she is entitled to be paid upon a quantum meruit basis.

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