

SKYWEST AVIATION PTY LTD V THE COMMONWEALTH OF AUSTRALIA [1995] ACTSC 20

Supreme Court of Australia Capital Territory - 14 March 1991

FACTS

Skywest and the Commonwealth had a contract for air surveillance services. The contract referred to a clause which entitled Skywest to an increased payment based on the ‘purchase price’ of the aircraft. The provision referred to modified or unmodified aircraft. The remainder of the contract was silent on the issue.

The court had to decide on the admissibility of the surrounding circumstances to resolve the ambiguity.

ISSUE

The court had to address the issue of estoppel in the context of conduct leading to and following a formal written contract which expressly constitutes the whole of the agreement between the parties.

FINDING

The court excluded evidence of alleged estoppels by convention or any other agreements or understandings arising in the course of pre-contract negotiations which culminate in a written contract.

QUOTE

Miles CJ said:

“Evidence about surrounding circumstances which goes merely to show subjective intentions and expectation is inadmissible to assist in interpreting the meaning of the contract.” -Page 6 of BC9506527

“In my view reasons of principals and policy combine to exclude evidence of alleged estoppels by convention or any other agreements or understandings arising in the course of pre-contract negotiations which culminate in written contracts”. - Page 66-67 of BC 9506577

Whilst those cases indicate that an equitable estoppel can, in appropriate circumstances arise from pre-contractual negotiations, they do not address the situations where the parties, as here, have subsequently executed a formal legally binding contract expressed to constitute the whole of the contract between the parties but where one party contends that the other is estopped from relying on rights created by the written contract”.

IMPACT

Parties may not be able to rely on an estoppel to protect their position where the subject matter of the estoppel is later encapsulated in a formal written contract.

Parties who receive oral undertakings from another party and who subsequently rely on that representation should ensure that any later written contract protects their interest and covers the earlier undertaking.

© 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