

**SOUTH BANK CORPORATION V MOSTIA CONSTRUCTIONS [1999] QSC 126**

Supreme Court of Queensland – 11 June 1999

**FACTS**

Mostia served two notices of dispute on South Bank and referred a dispute to arbitration under clause 47 of the AS2124 Contract.

South Bank claimed that the first notice was not properly served and that the second notice did not adequately identify and provide details of the dispute.

Mostia claimed that it had provided the details in a conference and in correspondence to South Bank.

**ISSUE**

Did the Notice of Dispute served by Mostia adequately identify and detail the dispute?

**FINDING**

The Notice of Dispute did not adequately identify and provide details of the disputes. The Notice must provide information which conveys to the other party the details of the dispute.

**QUOTE**

Mackenzie J said:

*“The sequence of events is set out to illustrate that if the documents in the applicant’s hands are the totality of the claim, it may be thought to be taking what is, in commercial if not legal terms, a narrow and rather sterile point, since it was common ground that there is no reason why the respondent could not provide a fresh notice which was, beyond argument in compliance with clause 41. Nevertheless, I am obliged to consider the adequacy of the notice according to the criteria set out in the authorities. With some reluctance I have come to the conclusion that I should find that the applicant is entitled to the declarations sought. It cannot be said on any view of the matter that the applicant has ever abandoned the stand that the notice of dispute was invalid even though it pursued avenues which may have lead to the dispute being resolved. No question of waiver estoppel arises.” - paragraph 10 of (1999) QSC 126*

*“It is a question of degree as to whether the details of the dispute have been adequately identified and provided. It is a question of the point at which sufficiency is reached.*

*In my view, the requirements of the clause have not been satisfied in this case and there being no basis upon which the respondent can succeed it is an appropriate can in which to give final relief.” -paragraph 12 of (1999) QSC 126*

## **IMPACT**

The court applied a strict test for the adequacy of a Notice of Dispute.

The court ignored the information provided to South Bank outside the Notice.

If an applicant wants to ensure that their Notice of Dispute is valid they should include all particulars and information in their Notice, even if it has already been provided.

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