

STAIR HOLDINGS PTY LTD V CELESTINO [2000] VSC 235

Supreme Court of Victoria– 7 June 2000

FACTS

Celestino was the director of V & M Celestino Investments Pty Ltd. The company made arrangements to have Stair Holdings build a house for it and a contract between the company and Stair Holdings was prepared. Celestino signed the contract on behalf of the company and before signing he was told that he was signing the contract on behalf of the company and was not personally bound by the contract.

Clause 9 of the contract provided that “The client is considered to be the signatory to the acceptance of this quotation and such client is considered to be personally liable, for the settlement of the goods supplied in the event of the clients company defaulting on payments.”

The company went into liquidation and Stair Holdings lodged a proof of debt for outstanding accounts with the liquidator. Stair Holdings later became aware that the company owed over \$300,000.00 to creditors and demanded payment from Celestino personally.

When Celestino refused to pay, Stair Holdings issued proceedings in the Victorian Civil and Administrative Tribunal. The Tribunal dismissed the claim and Stair Holdings appealed to the Supreme Court.

ISSUES

Was Celestino a party to the contract or bound by clause 9 of the contract?

FINDING

The Court found that Celestino was not a party to the contract as he was not a signatory to the contract.

Celestino only signed the contract as a director of the company and never agreed to be personally bound.

QUOTE

Smith J said:

“I note that there are other possible bases on which the decision, may be supported; for example, because of the representations, the respondent was entitled to and had avoided the contract or the appellant was estopped from relying on cl 9.

Alternatively, I note that in any event it can be argued that cl 9 rendered the company a signatory, not the respondent; for it makes ‘the client’ ‘the signatory’ and the company was ‘the client’.

In the alternative, it is arguable that cl 9 is meaningless and therefore uncertain and should be severed ...”

IMPACT

When preparing contracts with a company it is important to ensure that proper contract clauses are included to make the directors also personally liable it that it the intention of the parties.

Also, it is important to ensure that staff who ask customers to sign contracts are properly trained about what representations and statements should be made about the contents of the contract.

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