

**STOCKLAND (CONSTRUCTORS) PTY LIMITED & ANOR V DARRYL I COOMBS
PTY LIMITED & ORS [2005] NSWSC 157**

Supreme Court of New South Wales – 9 March 2005

FACTS

Stockland (Constructors) Pty Limited (‘Stockland’) issued an invitation for tenders for the steel fabrication sub-contract. The invitation was based upon a “trade package” comprising architectural and engineering drawings depicting the structural steel, a bill of quantities and sub-contract documents containing proposed terms.

Darryl I Coombs Pty Ltd (‘Coombs’) and others were responsible, under their retainer, for ensuring that the totality of drawings in this package sufficiently depicted the work to be carried out by a tenderer.

Stockland claimed, at first instance, costs for additional works as the architectural drawings contained omissions and inaccuracies, which resulted in conflicts between the architectural and engineering documents. There were inconsistencies between the bill of quantities and the drawings and Coombs failed to warn the Stockland about these deficiencies and errors in the tender package at any material time.

Coombs counter-claimed for additional fees arising from changes in the scope of works and subsequent variations.

The Court appointed Referee in his report, dealt with the cost consequences of substantial alteration to the design or scope of works Coombs submitted that any changes to design work were to be remunerated. The Referee found that changes would not be remunerable unless it was clear as to what additional work Coombs were required to undertake and that it was outside the scope of its percentage fee. Stockland then sought to adopt the Referees Report.

ISSUE

Whether the Report should be adopted.

FINDING

The Supreme Court held that the challenge was unsuccessful as the Referee had made no demonstrated error in his finding that the terms of the agreement included changes in scope within the percentage fee.

QUOTE

Einstein J at paragraphs 27, 29 and 30 stated:

“[27] I would add to this reasoning the proposition that a change in the scope of work could not logically entitle the architects to some specific remuneration unless and until it would be clear as to what additional work they were required to undertake apropos that change.”

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[29] It should also be observed that the referee was entitled to bring his own knowledge on practices of the industry to bear in construing the exchange of correspondence in terms of the proper approach to construction where one looks to discover the objective intention of parties operating in a particular highly specialized field.

[30] It was accepted by the referee that the cost of re-design and re-documentation could not be accurately reflected in a percentage of the construction cost. On the other hand he also focused on the fact that there simply was no specific provision or protocol in the contract to deal with that varied work. ”

IMPACT

In the circumstances, where a professional may be required to undertake additional work a percentage fee may result in a substantial under-recovery of his additional time and cost. Clear terms and conditions are required by every consultant.

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