

THIESS CONTRACTORS PTY LTD V PLACER (GRANNY SMITH) PTY LTD [2000] WASCA 102

Supreme Court of WA – 14 April 2000

FACTS

Placer was the owner of the Granny Smith gold mine and in 1989 engaged Thiess to carry out open cut mining at the mine site.

The original contract was a schedule of rates contract; latent conditions led to Thiess making windfall profits.

In 1991, Placer therefore proposed that the parties enter into a partnering arrangement with the parties to share the risk of cost fluctuations, the parties working in good faith on all matters relating to the contract, and the contract providing for a fixed profit for Thiess.

Placer terminated the contract in March 1995 and relied upon a clause that stated that Placer could terminate the contract at any time and for any reason.

Thiess issued legal proceedings claiming that the termination of the contract was unlawful.

Placer counterclaimed for damages from a breach of contract alleging that Thiess had not acted in good faith by providing an initial incorrect estimate of its genuine costs according to which Thiess was to be paid.

ISSUES

Did alleged representations by Placer that the contract would remain in place for the life of the mine lead to Placer being estopped from terminating the contract?

Did Thiess fail to act in good faith and breach the contract in that it misrepresented that its rates were genuine estimates of its costs?

FINDING

Placer only showed an intention to retain Thiess for the life of the mine. The contract always had the termination clause and it was not removed from the contract despite the requests of Thiess.

Thiess had provided incorrect estimates of its genuine costs and had breached its contractual duty to act in good faith when providing the estimates. However, Placer had failed at the trial to provide proper evidence of the damages it suffered and the Court awarded nominal damages of \$100.00 to Placer.

QUOTE

Ipp, Steytler & Wheeler JJ said:

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Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com

“There are several provisions in the contract itself which indicate that the parties intended that mining be carried on by Thiess pursuant thereto for the life of the mine. But that intention was always subject to the termination clause.

This is apparent from the terms of the contract itself.”

IMPACT

The Court’s judgment suggests that partnering agreements will be interpreted using the usual rules of construction.

However, the Court also showed a willingness to enforce contractual obligations of good faith when one party to the contract misrepresented its position to the other party.

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