

VARNSDORF PTY LTD V FLETCHER CONSTRUCTIONS LTD [1999] VSC 9

Supreme Court of Victoria – 1 February 1999

FACTS

Varnsdorf was the lead contractor and Command and Fletcher were sub-contractors. Varnsdorf referred a dispute to arbitration.

Fletcher made allegations against Command in its witness statements and Command then served a notice of dispute after the thirty day time limit specified in the contract.

Command made an application to the Court for an extension of time to serve the notice of dispute. Section 48 of the Commercial Arbitration Act allows the Court to extend the time for doing any act linked to an arbitration.

ISSUES

Should the Court extend the time for Command to serve its Notice of Dispute on Fletcher?

FINDING

The arbitration was for a substantial dispute and Command would lose a large claim against Fletcher if the extension was not granted. Also there was no evidence of any prejudice to Fletcher if the extension was granted by the Court.

QUOTE

Beach J said:

“The amount at stake in these arbitration is large. Some measure of that is to be gained for the fact that accordingly to Megens’ affidavit Varnsdorf has already expended some \$3 million in legal and other costs in preparing for the arbitrations and Fletcher has already expended the sum of approximately \$2 million. Clearly great prejudice could be caused to Command if it was precluded from pursuing its claim against Fletcher only by reason of the fact that it failed to serve its notice of dispute in time.” Paragraph 8(3) of [1999] VSC 9

“Command or its then solicitor - had I hasten to add that the solicitors presently acting for Command only came into the matter a comparatively short time ago – is solely responsible for delay in serving the notice and there can be no valid justification for its or his failure in that regard. But it has not been contended that that delay has caused any prejudice to Fletcher, nor in my opinion could it have been.” Paragraph 8 (5) [1999] VSC 9.

IMPACT

A Court will be willing to grant an extension of time to serve a Notice of Dispute provided the party seeking the extension would suffer a great prejudice and the other party is not prejudiced by the delay.

© 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