

**McGRATH CORPORATION PTY LTD V. GLOBAL CONSTRUCTION MANAGEMENT PTY LTD & IAN VINCENT TAYLOR [2011] QSC 178****FACTS**

McGrath Corporation (“MCPL”) commenced a development constructing a twin tower unit. Global Construction (“Global”) was engaged by MCPL as construction manager for the project. Ian Taylor, who traded as ITF Formwork (“ITF”), was engaged by MCPL to perform form working on the project.

ITF performed its contract poorly and MCPL alleged that Global had breached its contractual obligations and common law duties by, amongst other things, failing to properly monitor ITF and immediately advise MCPL of any known defects. The court held that Global and ITF had breached their obligations and duties and awarded damages in total of \$716,074. MCPL’s claim was governed by the proportionate liability provisions of the Civil Liability Act 2003 (QLD).

**ISSUE**

What proportion of damages are considered just and equitable having regard to the extent of Global’s responsibility for those damages?

**FINDING**

The Court followed the principle set out in *Yates v Mobile Marine Repairs* which stated that the Court “*should apportion liability according to considerations such as (but not limited to) which of the wrongdoers was more actively engaged in the activity causing loss and which of the wrongdoers was more able effectively to prevent the loss happening*”.

The Court held that Global was to bear 50 percent of the rectification costs and the direct delay costs and awarded damages payable by Global of \$557,166.

**QUOTE**

Daubney J stated at [197-198] that:-

*“[197] ...It is clear that ITF was actively engaged in the activity causing loss – it was, after all, the trade contractor which performed the defective form working. Indeed, I would consider it contrary to both justice and common sense not to find that ITF a significant degree of responsibility for the damages.*

*[198] ...In a real and practical sense, the responsibility which Global bears arises not so much from the performance of the defective work but from Global’s failure to perform the duties it owed MCPL which, if performed, would have prevented the loss. Given its position as construction manager, with contractual responsibilities to monitor ITF’s work and recommended causes of action in the event of ITF’s failure to perform and given also the fact that Global’s failures extended over a significant period of time during the construction of the buildings (meaning that the extent of the defective works became progressively worse as the buildings were further constructed), I consider that Global should also bear a significant proportion of responsibility for the damages.”*

**IMPACT**

Parties to a contract must be aware of their own obligations and duties under a contract and ensure at all times that they are not in breach of them. Failure to do so can lead to a party being held proportionately liable for losses even if it appears at first glance that another party is causing the breach

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