

MURPHY CORP LTD v ACUMEN DESIGN AND DEVELOPMENT (QLD) PTY LTD
[1995] 11 BCL 274
Supreme Court of Queensland – 19 December 1991

FACTS

Murphy Corp Ltd ('Murphy') entered into a contract with Acumen Design and Development (Qld) Pty Ltd ('Acumen') for the design and construction of a "theme exhibit known as the 'Fantastic Sea Project' about the relationship between man and the sea". Murphy claimed that the project was to have reached the stage of practical completion by 15 December 1989. Murphy also asserted that practical completion had not taken place by 15 June 1990 after repeated notices by the Contractor.

ISSUE

What constitutes practical completion?

FINDING

The Court found that "practical completion" means completion for practical purposes, that is, for the purpose of allowing the employers to take possession of the works and use them as intended. Certification from the superintendent was not the only evidence that practical completion had been achieved.

Practical completion was achieved on 17 December 1989 when the exhibit was opened to the public and Murphy conducted a tour of the exhibit. Some minor work was still to be completed, however, that did not alter the fact that there had been substantial compliance of with the contractual requirements.

By taking possession and operating the exhibit for profit, Murphy waived any right it had to take the point that the superintendent had not issued a certificate of practical completion as at 17 December 1989.

QUOTE

Williams J held:

Ordinarily the best evidence that such a stage has or has not been reached will be a certification from the contract superintendent. But that does not mean, in my view, that in absence of a certification for practical completion the contractor can never prove in legal proceedings that such a stage had in fact been reached. One situation where the contractor could prove that such a stage had been attained in the absence of a certification would be where the employer had taken possession of the works as completed on the express or implied understanding that a stage of practical completion had been reached and then used them for the intended purpose.

IMPACT

This case stands for the proposition that practical completion means completion for practical purposes, that is, for the purpose of allowing the employers to take possession of the works and use them as intended.

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