

**STATE OF NEW SOUTH WALES v COYA (CONSTRUCTIONS) PTY LTD
(1994) 10 BCL 403b
Supreme Court of New South Wales – 4 July 1994**

FACTS

The Minister for Public Works for the State of New South Wales (“the State”) entered into a contract with Coya (Constructions) Pty Ltd (“Coya”) for the construction of a tunnel to convey water from Bunning Creek to Boomerang Creek and for associated works for the Gosford Wyong water system. The Contract was administered by the Department of Public Works.

A dispute arose and the matter was referred to arbitration and determined in Coya’s favour. The State then appealed the arbitrator’s award.

In the arbitration, Coya contended that, as a matter of implication of law, the Principal was under an obligation to ensure that the Superintendent properly valued the variations to work under the contract and that in breach of its obligations the Superintendent failed to ensure that the Superintendent properly valued variation work. Therefore, Coya submitted that it was entitled to damages for breach of contract.

The State submitted that there was no authority for the proposition that the Principal owed the Contractor a duty to ensure that the Superintendent’s decisions were correct, or that it was vicariously liable for any “errors” of certification by him. Accordingly, the arbitrator had made a manifest error of law on the face of the award.

ISSUE

Whether the Principal was liable for the Superintendent’s failure to “get it right”.

FINDING

The Court considered the specific submissions put to the Arbitrator and cited with approval the Arbitrator’s finding that “[t]hese judgments precede the *Perini* judgment and merely re state the legal position that in acting as certifier the Superintendent must act independently. That the situation, as held by Macfarlan J, is the current law is reinforced by the 1986 Edition of the AS2124 in which the contract establishes the Principal’s obligation to ensure that the Superintendent acts fairly.”

The Court found that the Arbitrator had “seized” on the matter to be determined and concluded that the way in which the Arbitrator dealt with the matter did not amount to any type of error, let alone a manifest error of law on the face of the award.

QUOTE

Rolfe J at 20 said:

The obligation upon the Principal was to ensure that the Superintendent considered applications for a variation properly and valued any such variations properly, ie by the application of an appropriate line of reasoning... However, it was not, so the Contractor submitted, pleaded that there was an obligation on the Principal to ensure that the Superintendent “got it right”, but rather that he was obliged to consider the matter properly.

IMPACT

This case stands for the proposition that a Principal may be liable for the Superintendent’s failure to properly consider and properly value variation claims but not to ensure he/she is always correct.

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