DOYLES

THIESS CONTRACTORS PTY LTD v PLACER (GRANNY SMITH) PTY LTD (2000) 16 BCL 130 Supreme Court of Western Australia – 16 April 1999

FACTS

Placer (Granny Smith) Pty Ltd ("Placer") entered into a contract with Thiess Contractors Pty Ltd ("Thiess") whereby Thiess would carry out mining operations for Placer at rates based on genuine estimates of the cost of its operation, plus an agreed profit margin of 5%. Placer terminated the contract on the basis that the cost of continuing with Thiess under the existing contract was substantially higher than prices otherwise available on the market. Clause 1.1.5 of the contract required that Thiess and Placer act in good faith.

Thiess commenced action against Placer alleging wrongful termination and alternatively, Placer acted in bad faith in terminating the contract.

Placer counterclaimed, alleging that it had overpaid Thiess because, in breach of the contract and despite its obligation of good faith, Thiess had deliberately inflated its estimates of costs to be incurred in carrying out the contract work.

ISSUE

Whether Thiess breached duty of good faith.

FINDING

The Court found that Thiess had breached its duty of good faith. This decision was affirmed by the High Court of Australia.

QUOTE

Templeman J said:

> These provisions are typical of many contained in section B which do not define rights and obligations with any precision. Their implementation clearly requires goodwill and co-operation on the part of both parties. "Good faith" must include those matters. In addition, I think that the obligation of good faith requires the parties to deal honestly with each other. For example, in relation to carrying out the works: if Thiess sought to nominate mining equipment in accordance with cl 2.1.6, it would be required to provide an honest justification to Placer in demonstrating that the proposal resulted in the lowest overall unit costs and achieved the required mining selectivity. In relation to the derivation of rates, cl C 2.1.3 provides for hourly operating costs of equipment to be formulated which are based on "relevant historical data". Those are Thiess' data. Hence the necessity for the "open book" negotiations. That being so, good faith, I think, would require Thiess to formulate plant rates which were honestly based on the relevant historical data.

Templeman J further stated that:

> I construe the obligation of good faith as requiring the parties to act honestly with each other and to take reasonable steps to co-operate in relation to matters where the contract does not define rights and obligations or provide any mechanisms for the resolution of disputes… In relation to the interpretation of the Contract, the obligation of good faith is more difficult to define. I think it requires the parties to construe or give effect to general provisions in such a way as to promote the contractual objectives which are to be gleaned either from the contract as a whole or from the provision in particular.

IMPACT

This case stands for the proposition that good faith involves goodwill, co-operation and honesty between the parties and this extends to the reasonableness and fairness in pricing.

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