



North Sydney Leagues' Club Pty Ltd v Synergy Protection Agency Pty Ltd [2012] NSWCA (8 June 2012)

FACTS

Synergy Protection Agency Pty Ltd (Synergy) contracted with North Sydney Leagues' Club Pty Ltd (North Sydney) for the provision of security services for two local clubs. The appellant, North Sydney, was found to have wrongfully terminated the contracts and was ordered to pay damages to Synergy for the loss of profit. Both parties accepted that the loss of profit was calculated by subtracting expenses from the revenue which would have been received under the contract, but the parties disagreed on which expenses should and should not be deducted.

ISSUE

The trial judge's assessment of damages did not include deduction of indirect and overhead costs which were not reduced by the termination when determining the respondent's lost profit.

FINDING

Justice Einstein found in favour of Synergy holding that there was no absolute principle as North Sydney submitted that account must be taken of overhead expense proportionately and that effect must be given to the fundamental principle of expectation damages, that the innocent party is entitled to such damages as place it in the same position as it would have been in had the breach not occurred.

The loss of profit was calculated by subtracting from the estimated contract revenue which would have been received had the contract remained until completion the expenses that are able to be saved once the innocent party has knowledge of the breach.

QUOTE

Einstein J at [46]... "There is no absolute principle, as submitted by the appellant, that account must be taken of overhead expenses. Nor in my opinion, as a matter of general principle, is the alternate approach for which the appellant contended, correct. That approach requires that overhead expenses be taken into account proportionately, that is, proportionate to the value of the contract to the overall business, unless the evidence demonstrates some different deduction should be made... The true principle is, as the trial judge found, that the plaintiff is entitled to such damages as place it in the same position as it would have been had the contract been performed."

IMPACT

The decision reaffirms that the appropriate principles must be adopted in calculating a claim for damages.

The case is of significant as it demonstrates the principle for calculating loss of profit when a contract has been wrongfully terminated that only the expenses which could be saved once the contract was terminated need to be subtracted from the future revenue.

Contract Managers should be careful to adopt the correct principles in making damage claims lest they under claim.

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Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com

www.doylesconstructionlawyers.com

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