



Update

Commercial Dispute Resolution

23 December 2011

BlueScope Steel (AIS) Pty Limited ats OneSteel Manufacturing Pty Limited



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[2011] NSWSC 1450

Holding Redlich acted for BlueScope Steel in successfully defending Supreme Court proceedings brought by OneSteel, in which OneSteel was asserting damages of over \$18 million.

The proceedings related to a deed for the supply of iron ore fines from OneSteel's mines in Whyalla to BlueScope Steel's Steelworks in Port Kembla.

In late 2008 and early 2009, BlueScope Steel cancelled 7 shipments of iron ore fines, relying on a provision of the deed which it said gave it the right to cancel shipments with its only liability being dead freight, ie the cost of the vessel sailing empty from Whyalla to Port Kembla. The same clause also allowed BlueScope Steel to request that the iron ore fines not taken be delivered at a later date, such request not to be unreasonably denied by OneSteel.

OneSteel argued for a different construction of the clause, namely that the provision allowed BlueScope Steel to "request" a cancellation which OneSteel could either accede to or deny.

In his decision his Honour Justice Hammerschlag accepted BlueScope Steel's interpretation of the clause. In his reasons, his Honour noted that it did not make sense for the discretion to refuse a request to cancel to be unfettered, when the discretion to agree to delivery at a later date was fettered by an obligation to act reasonably.

Whilst construction cases are generally characterised as being matters on which "reasonable minds may differ", this decision is a reminder that the starting point for construing an agreement is the agreement itself.

The Court will give important weight to any inconsistencies within the agreement itself, often without recourse to the surrounding circumstances.

The case also highlights the importance of expressly exercising all relevant contractual rights at the time of seeking to rely on those rights.

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