



FACTS

Koompahtoo (land owner) & Sanpine (a property developer) entered a joint agreement for the development of land which did not expressly provide for either party to terminate the agreement unilaterally. Following difficulties the 2nd appellant was appointed as administrator of Koompahtoo. Two months later a mortgagee went into possession of the land. From February until December 2003, the administrator attempted to obtain from Sanpine information regarding the financial position of the joint venture. Sanpine had not kept proper financial records. On 12 December 2003, the administrator, on behalf of Koompahtoo, terminated the agreement. Sanpine commenced proceedings seeking a declaration that the termination was invalid. The trial judge found for Koompahtoo, Sanpine then appealed to Court of Appeal, which upheld the appeal. Koompahtoo then appealed to High Court.

ISSUE

Whether multiple breaches of a non essential term give rise to the common law right to unilaterally terminate a contract.

FINDING

The Court held that “a party may terminate a contract where there has been either a breach of an essential term or a sufficiently serious breach of a non-essential term by the other party.” Consequently the termination of the joint venture agreement by the Land Council had been justified by sufficiently serious breaches of intermediate terms.” The breaches had deprived the Council of a substantial part of the benefit for which it had contracted.

QUOTE

It was held:

[53] “We rest our decision in the appeal not upon the ground of breach of an essential obligation, but upon application of the doctrine respecting intermediate terms.”

[71] “Even if one were to accept that all of the contractual obligations with which Sanpine failed to comply were inessential in that, on the true construction of the contract, not every breach would justify termination and that the obligations were intermediate terms in the sense earlier discussed, nevertheless,...the breaches of Sanpine were in a number of respects gross, and their consequences were serious...it ought to be accepted that breaches of that order deprived Koompahtoo of a substantial part of the benefit for which it contracted. Such breaches justified termination.”

IMPACT

While a single breach of a non essential term will not provide grounds for termination, multiple breaches may. It must be shown however, that when taken in their entirety the consequence of the multiple breaches were of a serious enough nature that they “went to the root of the contract.”

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