

FACTS

The parties had entered into a contract for Bedrock to renovate and fit out a restaurant in the Adelaide CBD for Mr Crea. The works were completed late, and some defects had been notified before the project had reached practical completion. Mr Crea took possession and commenced operation of the restaurant before all of the defects were rectified, limiting access and eventually refusing any access.

Mr Crea commenced an action in the District Court seeking damages for the incomplete defects, and Bedrock cross-claimed for the balance of progress claims, variations, and delay costs. Mr Crea was largely successful on the defects claim, and Bedrock was partially successful on the cross-claim. The District Court found that Mr Crea was justified in refusing access, and each party was granted interest on its judgement. The amount awarded to Mr Crea was higher than the amount awarded to Bedrock.

ISSUES

Grounds 1, 3 and 4 of the appeal by Bedrock related to how the trial judge assessed the defects claim. In particular, the finding of “reasonableness” in denying further access was challenged when the contract provided 10 days of access for the rectification of defects, which had not been provided despite Bedrock being always willing and able to attend.

Ground 7 related to the date from which interest should be calculated. The remaining grounds were either not pressed, not decided, or related to matters that were consequential on the other grounds.

FINDING

The judgement of the Court of Appeal was delivered by Doyle JA, with Livesey JA and Bleby JA agreeing. It was found that the contractual requirement for 10 days of access for rectification had to be followed, and at the time when Bedrock was excluded from the site those 10 days had not expired.

“ [141] It follows that Mr Crea did not establish his entitlement to recover the cost of a third party rectifying the defects identified in Revision C, and that the trial judge erred in concluding that he did. The appeal should be allowed on this basis, with the result that there is no need to address the balance of the essentially factual complaints raised under Grounds 1, 3 and 4.”

The Court noted that this might have determined the matter entirely, but that his was not how Bedrock had pleaded its case. Bedrock had only sought a reduction in the award to Mr Crea for the works it could have completed if it had been allowed the full access, and the Court made an adjustment to the award on that basis. The Court also agreed that Bedrock’s interest should be calculated from the time its claims were due under the contract, not from when it made its claim in Court. As a result, the awards were adjusted such that the balance was in favour of Bedrock.

IMPACT

A right to claim damages for the rectification of defects is governed by the contract terms which permit access for rectification. It is also important for a party to plead its case in the most favourable manner to obtain the full benefit of the contractual protection.