

Thiess Services Pty Ltd v Mirvac Queensland Pty Ltd [2006] QCA 50

FACTS

The case of *Thiess Services Pty Ltd v Mirvac Queensland Pty Ltd [2006] QCA 50* involved a dispute between a Contractor (**Theiss**) and a principal (**Mirvac**) as to the remediation of a contaminated package of land.

In 2003, the parties contracted to clean up the property, which was a former gasworks, on the basis of Terms of Reference supplied by the Environmental Protection Agency. The lump sum contract stated:

‘The primary objective of the project is to fully remediate the contaminated material in order to render the entire site suitable for any land use’

The contract also provided a right of termination to Mirvac:

‘The Principal’s right to terminate for its sole convenience includes, without limitation, a right to terminate if high level contaminated material cannot be disposed of to a mono cell’

It subsequently became apparent to Theiss, that the remediation would be significantly more difficult and expensive to achieve than it had accounted for when executing the agreement, and it applied for a declaration from the court for an implied term that:

‘it need discharge that obligation only if it could be done economically’

ISSUE

Whether a right to terminate if the work was found to be economically unfeasible was implied?

FINDING

The court unanimously dismissed the appeal, with his Honour, De Jersey CJ (with whom both McPherson and Williams JJA agreed), stating:

25. *“The appellant contended that if the contract would not otherwise bear this construction, a term should be implied which would relieve the appellant from the absolute obligation, should full remediation not be possible “safety, efficiently or economically”. By the express terms of the contract, the appellant is obliged to secure that result efficiently and safely. The latent condition clause means that the appellant is entitled to no extra payment because the work may prove more expensive than expected. Implying the proposed term would in those circumstances conflict with the express stipulations of the contract. Also, the scope of the implication would inevitably be uncertain, there being any number of ways of approaching the determination of the economics of the operation in the context of a range of possibly emergent circumstances.”*

IMPACT

This suggests that the court’s position is that the contractor will bear the risks of achieving contract performance without relief from contract conditions. It is important not to agree to discharge unreasonable obligations.