

John Holland Pty Ltd v Hunter Valley Earthmoving Pty Ltd

[2002] NSWSC 121 (8 March 2002 - McClellan J) Supreme Court of New South Wales

Arbitration - global claims - leave to appeal - section 38 Uniform Commercial Arbitration Acts

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This decision of Justice McClellan provides a pithy statement of the law in an area of continuing interest to those who practise in the construction area.

Leave to appeal was sought from the arbitrator's findings on the basis that he was said to have accepted a 'global claim' which the respondent submitted 'is not known to the law'. In rejecting the application for leave to appeal, his Honour said:

- "12 The description of a claim as a "global claim" is familiar to those involved in the construction industry. Generally, it is used as a "short-hand" method of describing a claim which does not readily permit of the individual identification of each of its component parts. Not surprisingly, this approach to a claim has generated disputes in relation to pleadings and related particulars. Defendants claiming to be embarrassed by a global claim have endeavoured to strike out pleadings.*
- 13 *In Nauru Phosphate Royalties Trust v Matthew Hall Mechanical & Electrical Engineers Pty Ltd & Anor [1994] 2 VR 386, Smith J expressed the view that it may be permissible to maintain a composite delay/disruption claim (a "global claim") where it was impossible and impractical to identify a specific nexus between each of the alleged events and the particular delay/disruption caused. In John Holland Construction & Engineering Pty Ltd v Koaerner RJ Brown Pty Ltd & Ors (1996) 13 BCL 262 at 270, Byrne J was of the view that where it is found to be impossible or impractical to identify each aspect of the nexus, a demonstration of its probable existence is sufficient.*
- 14 *In Bernhard's Rugby Landscapes Ltd v Stockley Park Consortium Ltd (1997) 82 BLR 46 at 74, Lloyd J held that that nexus need not always be expressed since it may be inferred. Whilst principles of natural justice require the plaintiff to set out with sufficient particularity its case, "what is sufficient particularity is a matter of fact and degree in each case".*
- 15 *The fate of any strike out application may often depend upon the capacity of a plaintiff to provide necessary particulars of its claim. But as these decisions make plain, a plaintiff who has a claim will not be denied the opportunity to prosecute that claim only because there may be difficulty in identifying with precision each individual element of the claim. Whether the claim can be sustained will depend upon the evidence in relation to it. If that*

1. Immediate Past President IAMA, Barrister-at-Law, Arbitrator and Mediator.

evidence allows a conclusion that the plaintiff has suffered a quantifiable loss, then it is open to the tribunal determining the matter to bring in a verdict for the plaintiff for the sum which it is satisfied is appropriate. It is not material that the claim is described as a "global claim" or given any other label.

- 16 *In the present case, as I have later indicated, the Arbitrator did not accept the claim for delay costs as claimed by the defendant. However, he did accept that delay costs expressed as the cost of delays in identifiable months, were recoverable. Whether or not a claim expressed in this manner is described as a "global claim" is irrelevant. The Arbitrator concluded that he was satisfied, having regard to the material before him, that the claim was justified in the sum he determined."* (emphasis added)

Hopefully, his Honour's remarks (and what they disclose of the manner in which arbitrator dealt with the claim) will be of assistance to arbitrators faced with a similar situation.