

CHOICE OF LAW PROVISIONS DON'T ALWAYS WORK

Transfield Pty Ltd v Fondside Australia Pty Ltd (Receivers and Managers Appointed)

Supreme Court of Queensland, Mullins J

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Parties to a construction contract might often agree that the laws of a particular State will govern the contract. That law will not always be the State where the work is carried out or where the parties reside.

Where a contract is governed by the laws of a State other than the State where the work is to be carried out, difficulties may arise as to the application of the law of the State nominated in the contract.

Recently, the Supreme Court of Queensland was asked to consider whether or not the *Subcontractors Charges Act 1974* (Qld) ('the Act') applied to work that was carried out in New South Wales. The Act, like the New South Wales *Building and Construction Industry Security of Payment Act 1999*, secures payment for subcontractors in certain circumstances.

In *Transfield Pty Ltd v Fondside Australia Pty Ltd (Receivers and Managers Appointed)* [2000] QSC 480, the parties agreed that the subcontract was to be:

[G]overned by, construed and enforced in accordance with the laws of the State of Queensland.

The subcontractor served a notice of intention to claim a charge pursuant to the Act in relation to work performed in New South Wales. The subcontractor sought to enforce the charge and argued that the Act applied because of the express adoption by the parties in the subcontract of the law of Queensland. The Court did not agree with this view.

The Court found that:

(1) The law stated in a contract might determine what law is applied in relation to the meaning, validity and effect of the contractual obligations;

(2) The reference in the Act to 'land' must prima facie be taken to be a reference to land within the State of Queensland; and

(3) The Act has nothing to do with the construction, validity, method of performance or enforcement of the subcontract. This is because the imposition of the charge upon the monies payable by the Principal under the Head Contract does not affect the method of performance of the Head Contract by means of the imposition of the (statutory) charge.

Accordingly, parties should not automatically assume that all the laws of a State nominated in the contract will necessarily apply to their contractual relationship.

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