

THE REASONABLENESS OF REIMBURSABLE COSTS

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The Supreme Court of South Australia recently held that reimbursable costs under a target estimate contract were limited to those costs that were reasonably and properly incurred by the contractor in carrying out the works under the contract (*OneSteel Manufacturing Pty Ltd v United KG Pty Ltd* [2006] SA SC 119).

FACTS

United entered into a target estimate contract with OneSteel to reline and upgrade a blast furnace operated by Onesteel at Whyalla. Pursuant to the contract, amongst other things:

- OneSteel was to pay United for all 'Reimbursable Costs' (as defined in contract); and
- United was to deliver its claims for payment supported by evidence of the amount due and such information as OneSteel's representative may require.

Claimed and paid costs were alleged to exceed the initial target estimate figure and disputes arose between the parties including over the proper interpretation of clauses dealing with the above matters. OneSteel sought various preliminary declarations from the court and the issues for consideration included, amongst others:

- whether or not the Reimbursable Costs were those direct actual costs reasonably and properly incurred under the contract; and
- whether the adequacy of the supporting evidence and information provided by United to Onesteel's representative in respect of its payment claims was to be judged subjectively (that is, by Onesteel) or objectively (that is, by reference to an objective standard of reasonableness).

DECISION

In respect of the first issue, DeBelle J held that in the absence of a clear expression to the contrary, where a construction contract provides that a contractor is to be reimbursed for costs it has incurred, it will be subject to an implied term that such costs must be reasonably and properly incurred. Was this not so, DeBelle J reasoned, the contract would effectively provide the contractor with a 'blank cheque' which could serve to 'put a premium on inefficiency and extravagance'.

DeBelle J concluded there was such an implied term in this case, although noted that the court was not required at this point to make any determination as to whether the costs claimed by United were in fact reasonably and properly incurred.

In respect of the second issue, DeBelle J determined that that United was required to support its claim with evidence and such information as the principal's representative may reasonably require, viewed objectively.

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