



## HIGH COURT OF AUSTRALIA

5 October 2011

### SHOALHAVEN CITY COUNCIL v FIREDAM CIVIL ENGINEERING PTY LIMITED

[2011] HCA 38

Today the High Court held that an expert's determination of issues in dispute between parties to a construction contract was made in accordance with the contract. The High Court allowed an appeal from the Court of Appeal of the Supreme Court of New South Wales which had held that the expert's determination was not binding on the parties because it was internally inconsistent.

Firedam Civil Engineering Pty Ltd ("Firedam") agreed to design and construct a waste water collection and transport system for Shoalhaven City Council ("Shoalhaven"). Under the contract, Firedam claimed an entitlement to variations and payment for additional works, extensions of time for those works and contractual compensation for the extended time. Shoalhaven claimed an entitlement to costs incurred from delayed completion. An expert was appointed under the contract to determine these issues. Under the contract, the parties were required to treat the expert determination as final and binding if the aggregate liability of one party to the other did not exceed \$500,000. Where the aggregate liability exceeded \$500,000, either party could commence proceedings.

In the determination, the expert refused to allow certain extensions of time claimed by Firedam arising from variations to works. Firedam argued that this was inconsistent with the expert's use of a discretion conferred on Shoalhaven in the contract to extend the time for the works to be completed. The expert had used Shoalhaven's discretion to assess Shoalhaven's claim for compensation for Firedam's delays to allocate responsibility for delays between Shoalhaven and Firedam.

The primary judge dismissed Firedam's claim to a declaration in the Supreme Court of New South Wales that the expert's determination did not bind the parties. The Court of Appeal disagreed. Shoalhaven appealed to the High Court by special leave.

The High Court held that the expert had adequately explained that he had used Shoalhaven's discretion to extend time as a device to allocate responsibility for delay caused by Shoalhaven. The Court held that that was not inconsistent with the expert's refusal to allow Firedam's claimed extensions of time. The High Court therefore held that the Court of Appeal erred and reinstated the orders of the primary judge.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*