



Case in Brief: Builder terminates contract with a “sorry mate...costs are going through the roof” but Queensland court says diddums

By Kate Holland

With the construction industry in the grip of labour and supply shortages and spiralling costs, a recent decision of the Queensland court is a timely reminder of the established principles of contractual repudiation. The decision is a warning to parties to think twice before terminating a building contract or indicating an intention not to continue.

In [Addinos Pty Ltd v OJ Pippin Homes Pty Ltd \[2022\] QDC 205](#), the Queensland District Court (the **Court**) found that a builder's decision to terminate a building contract because it was unable to meet escalating industry costs was not a lawful basis for termination. It found the builder liable for repudiation and ordered it to pay nearly \$160,000 to the developer in loss and damage, nearly \$35,000 in interest and costs to boot.

The facts

A property developer Addinos Pty Ltd (**Addinos**) contracted a building company OJ Pippin Homes Pty Ltd (**Pippin**) to carry out works including demolition, excavation and the construction

of several townhouses (the **Works**). Under the construction contract, Pippin was required to commence the Works within 14 days of receiving all necessary approvals.

The project suffered from long delays, including delays in obtaining the required approvals for demolition, plumbing and building. After 12 months, only the demolition was completed. Meanwhile, the construction industry costs had risen significantly and Pippin lost several members of its staff.

Struggling with capacity and the rising costs of the project, Pippin emailed a letter to Addinos stating that it was terminating the contract for construction of the townhouses. Pippin explained that this was because of the increased costs: *Pippin ... will be terminating the build contract... the construction costs have increased significantly since the project was priced, almost 12 months ago...*

Pippin's director Mr Hastie followed up the letter with a text message to Addinos' development manager, saying: *I just can't build this project*

sorry mate ... we lost two of our most experienced supervisors ...our costs for these [small projects] are going through the roof... I really am sorry for the inconvenience caused.

Addinos responded acknowledging termination of the contract as at the date of Pippin's letter, and alleging wrongful repudiation: *Both your letter, and your abandonment of the contract and works, each amount to a wrongful repudiation and breach of contract... the contract was at an end as a result of your letter...*

Addinos contracted another builder to complete the Works and raised an action against Pippin for loss and damage, including increased construction costs, delay-related interest and bank fees.

In defending the action, Pippin unsuccessfully claimed that it was Addinos who had repudiated the contract first, because it failed to obtain the required approvals in a timely manner.

The decision

The Court had little difficulty in finding that Pippin's termination was a repudiation.

The Court noted that there was no clause in the construction contract entitling termination on the basis of increased costs. It held, therefore, that the basis for termination given in Pippin's letter

and in Mr Hastie's text were not a lawful basis to terminate.

The Court reiterated the established principles of repudiation – it occurs when one party demonstrates an intention to no longer be bound by the contract. Pippin's letter and text demonstrated Pippin's intention to no longer be bound by the Contract and so Pippin had repudiated the contract.

The Court dismissed Pippin's argument that Addinos had been the first to repudiate by its failing to obtain the approvals. The Court noted that Pippin's letter and text message made reference only to Pippin's own issues – increasing construction costs and staff turnover. Applying the same test for repudiation as before, the Court found no evidence that Addinos had demonstrated an intention to no longer be bound by the Contract, and therefore Addinos did not repudiate it.

Conclusion

COVID, labour shortages and supply-chain issues continue to dog the construction sector and drive costs ever higher. Parties struggling under these pressures should avoid making any hasty decisions to terminate or indicate an intention not to complete a project – doing so could leave them wide open to costly repudiation claims.

ABOUT THE AUTHOR



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