Contract Law Case Studies: Opal Projects Pty Ltd Versus Mehayla Construction Pty Ltd; Jack Hill Holdings Pty Ltd Versus Barrage Investments Pty Ltd

In 2017, Opal Projects Pty Ltd (Opal), a significant construction company, was engaged to design and construct a swim centre in the Sydney suburb of Blacktown. Mehayla Construction Pty Ltd (MC), an experienced construction company, submitted a tender of $4,000,000 on the 19th of March 2017, stating their earnestness to work on the roof structure for the swim centre. A letter of intent stating conditions of work between both parties was submitted by Opal to MC. From the 25th of March 2017 until the 20th of April 2017, MC continued to work on the centre. On the 21st of April 2017, Solicitors for Opal wrote to MC stating that it was Opal's intention not to proceed with MC for the development of the Centre since 'no formal subcontract based upon the Project Related Conditions of Contract has been entered into between the parties as contemplated by the Letter of Intent dated 19 March 2017.' The issue is whether a binding agreement between Opal and MC was enforced through the rules of common law and if a letter of intent is a binding agreement between the parties.

When discussing this case, both parties must revise common law on whether agreements to agree enforceable / sufficiently certain When discussing this case, both parties must revise common law on whether agreements to agree enforceable / sufficiently certain. Contract law states that a contract is a legally binding agreement between two or more people. A contract has three elements: 1. An offer — this is made when you decide to buy something and offer to pay a price. You may also offer to give something or do something in return. 2. An acceptance — this is done when the seller agrees to supply the goods or services. The acceptance may be in words or an action. 3. Consideration — this is the value that is given in return for the goods or services offered to be supplied or acquired. It can also be the promise to pay at a later date after certain events occur or procedures are followed.

In the case of Masters v Cameron (1954) , The High Court of Australia (High Court) stated that legally binding contracts can be one of three types. The case of Opal vs MC relates to the second type of contract stated by the High Court; 'Where the parties have agreed upon all the terms of their arrangement, but nevertheless, have made performance of one or more of the terms conditional upon the execution of a formal document'. Through the High court's statements and through contract law, whether the letter of intent was legally binding can now be determined.

The letter of intent submitted by Opal to MC clearly states conditions of the contract between both parties and that acceptance came into force on the 19th of March 2017. When reviewing this letter of intent and contract law, it can be seen that the three elements of a contract are present. The offer of $4,000,000 to complete the main roof at the Blacktown Swim Centre made to Opal by MC was accepted. The acceptance of the offer by Opal can be seen in that first term and also when the letter of acceptance was included which was dated 19 March 2017 and said to be included in and form part of the contract agreement. Finally, the consideration which was the value of $4,000,000 and where the letter of intent states 'Where work commences prior to the execution of the subcontract agreement, no monies will become due and payable until the

subcontract agreement has been executed.' Relating this case to the High Court's statement in Masters v Cameron addressed earlier, the letter of intent submitted to MC by Opal clearly states all terms were agreed to. Also, the statement declared '…performance of one or more of the terms conditional upon the execution of a formal document' which has occurred as MC has begun their work since the formal document, the letter of intent, was submitted. Therefore, the statements made by the High Court in Masters v Cameron and in Common law have assisted in determining the final verdict as to whether there was a legally binding agreement between Opal and MC.

Whilst reviewing contract law and the precedent of Masters v Cameron (1954), it can come to a conclusion that a legally binding agreement between Opal and MC was made on the 19th of March 2017. The letter of intent had the three elements of a contract and followed the statement made by the high court in Masters V Cameron.

Opal Projects Pty Ltd (Opal), a respected construction company, was sought to design and build a swim centre in the Sydney suburb of Blacktown in 2017. Mehayla Construction Pty Ltd (MC), an experienced construction company submitted a tender of $4,000,000 on the 19th of March 2017, stating their interest to work on the roof for the swim centre. The terms of work between both parties were stated in the letter of intent submitted by Opal to MC. This letter stated that Opal accepted MC's offer of $4,000,000. MC are now trying to determine whether they'd be able to establish an estoppel against Opal as Opal stated on the 21st of April 2017 that it was Opal's intention not to proceed with MC for the development of the Centre.

In this case, contract law must be reviewed in order to determine how the law of estoppel will interconnect with this case. Contract law states that an estoppel by deed '…is a rule of evidence founded on the principle that a solemn and unambiguous statement or engagement in a deed must be taken as binding between parties and privies, and therefore as not admitting any contradictory proof.' The use of an estoppel can be seen in the case of Waltons Stores (Walstons) (Interstate) Ltd v Maher. Even though a legally binding contract was not put into force, a promissory estoppel could still be established as the specified terms were present and there was an agreement made. The study of the precedent and contract law must be interconnected with the Opal vs MC case in order to establish relevant common terms.

As discussed earlier, the letter of intent issued by Opal to MC was seen as a formality and was legally binding. The High Court of Australia (high court) also considered the factor that the final lease sent by Maher to Walstons clearly stated the legal terms between the parties. Even though it was not signed by Walston Ltd, it was still an agreement that was seen as a formality by the court. When analysing the information given, MC and Opal have also conducted a legally binding, formal agreement and as contract law states, 'a deed must be taken as binding between parties and privies'. As the letter of intent states Opals acceptance of MC's Offer in the 1st clause, Opal Projects Pty Ltd hereby accept your offer of $4,000,000'… and also mentions that a letter of acceptance 'will be included in and form part of the contract agreement' in the 4th clause , it can be seen that the agreement terms have been reviewed and accepted by both parties and relating to contract law and estoppel, this deed must be taken as binding. The fifth term in the letter of intent states, 'Where work commences prior to the execution of the subcontract agreement, no monies will become due and payable until the subcontract agreement has been executed. In regards to this term, even though a subcontract agreement was not formed, there was still a legally binding agreement and when correlating this with the case of Waltons v Maher, the High Court stated that if a promisor makes a promise

then the promise cannot be unenforced unless the terms were unconscionable. The terms were clearly stated and were not unconscionable as MC fulfilled their role in commencing their work for Opal and both parties accepted the terms.

Furthermore, when discussing the case of Opal vs MC and Walstons VS Maher, both battle a promissory estoppel and the verdict of the High Court in the case of Walstons VS Maher can be applied in this case together with contract law. Reviewing the information given, Mehayla Construction Pty Ltd is able to establish an estoppel against Opal Constructions through Estoppel laws found in contract law and verdicts concluded in precedents.

In 2018, Barrage Investments Pty Ltd (BI) owner and lessor of an office building in the Sydney CBD leased out the office building to Jack Hill Holdings Pty Ltd (JHH). The leases contained a clause stating that JHH was required to request approval from BI to ‘carry out any alteration to the Leased Premises’. After the request of altering the buildings foyer was denied by BI due to the recent construction and the high-quality materials used, JHH decided to still renovate the foyer in October 2018. The issue is that JHH breached the lease terms and decided to renovate the foyer after BI denied their request. BI must determine whether they are entitled to claim damages from JHH for their alterations to the foyer.

In order to determine to rule for this case, a case that shares similar issues, Tabcorp Holdings (Tabcorp) Ltd v Bowen Investments Pty Ltd (Bowen), will be used. When analysing this case, the common law rule stated, “The rule of the common law is, that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed.”. This rule from the precedent is appropriate for this case as a clause from the lease has been breached and damages have occurred and when applied to this case, it can become a foundation in determining a basis for damage claims.

In this case, to determine whether BI is entitled to claim damages, common law rule used in precedents must be applied. When referring to common law rule stated in Tabcorp V Bowens, placing BI in the same situation as if the contract had been performed would leave them in their current financial position as the lease does not contain any clauses regarding financial claims if any unauthorised alterations were to happen, only that approval must be given to the tenant in order for an alteration to occur. Therefore, with this case, like Tabcorp v Bowens, the measure of damages is the loss sustained by the failure of JHH to perform that obligation of not performing unapproved alterations; and that loss is the cost of restoring the premises to the condition in which they would have been if the obligation had not been breached . Applying the rule to this case, the basis for the claim of damages can be made in regard to the destruction of the old foyer and the construction of a new foyer and damages for any lost rent at the time restoration of the old foyer. This will place, as common rule stated, BI ‘in the same situation, with respect to damages, as if the contract had been performed’ .

To conclude, Barrage investments are entitled to claim damages from Jack Hill Holdings in regards to their unauthorised alteration to the foyer. These claims are calculated on a basis of the costs in order to destruct the new foyer JHH has built and restoring the old foyer injunction with any lost rent at the time of the restoration.

In 2018, Jack Hill Holdings Pty Ltd (JHH) sought to lease an office building in the Sydney CBD from Barrage Investments Pty Ltd (BI) owner and lessor of the office building. The lease contained certain clauses, one specifically regarding rent instalments and in the event of JHH failing to pay the rent on time, a $5000 fee would be charged in regards to costs of administration. In September 2018, JHH failed to pay their rent instalment of $10,000 on time and were advised that they now have to pay $5000 in late payment fees. The issue is to determine whether JHH is obliged to pay BI the sum of $5,000 for the late payment of the September 2018 rent instalment and whether this payment is a considered a penalty.

When analysing this case, the precedent, Paciocco v Australia and New Zealand Banking Group Ltd (ANZ), which also discusses late payment fees and whether they coincide with the penalties doctrine. In brief terms, the High Court argue whether the late payment fees are non-applicable under penalty doctrine terms; '…if the sum stipulated for is extravagant and unconscionable' and '…the sum stipulated is a sum greater than the sum which ought to have been paid'. In 2012 the High Court ruled that a contractual 'breach' is no longer a prerequisite to whether or not a clause is a penalty. These rules will assist in determining whether JHH is obliged to pay the $5,000 late payment fee under the penalties doctrine.

In this case, JHH made the rent payment of $10,000 to BI one day past the due date, the 2nd of September 2018. The 6th lease clause states that 'In the event of any failure by the lessee to pay an instalment of rent by the due date the lessee shall also pay to the lessor the sum of $5,000 to cover the lessor's costs of administration related to the default' . Even though this clause states a basis for the late payment fee, when discussing the High Courts rule in 2012 , this contractual breach of a late payment can no longer be used to determine whether the late payment fee is a penalty. Also, the fee is not 'a sum greater than the sum which ought to have been paid' and when discussing whether this sum is "extravagant or unconscionable", there aren't calculations on liquidated damages to determine a basis on. The case of ANZ v Paciocco states when referring to liquated damages, 'it must be out of all proportion to any legitimate interest of the innocent party to the enforcement of the primary obligation' and once again, no calculations were provided for the liquidated damages, only that they were for costs of administration. Therefore, when correlating this issue with the factors of the penalties doctrine, no relevant terms can be met, which means the late payment fee isn't a penalty.

In closing, the late payment fee is seen as not a penalty in accordance to the High Court's factors of penalty doctrine in Paciocco v ANZ and also, the breach of a late payment can no longer assist in determining whether a fee is a penalty. Through this information stated by the High Court and the facts presented in the lease between JHH and BI it has come to the conclusion that JHH is obliged to pay the late payment fee of $5,000 to BI as it is seen not to be a penalty.