Possession of Terminated Subcontractor's Materials

Alucraft Pty Ltd v Costain Australia Ltd, Supreme Court of Victoria, Nathan J, 20 July 1990.

This case came before Mr Justice Nathan of the Victorian Supreme Court on an interlocutory application.

By a contract the parties entered into an arrangement whereby Costain, the builder, supplied to Alucraft, a sub-contractor to Costain, material which Alucraft then processed and fabricated into fit form for the cladding of the building.

A dispute arose. The contract was terminated. Alucraft initiated proceedings.

Costain stated that it had paid for and supplied materials to be used by Alucraft for the works. Costain brought an application seeking an order that Alucraft deliver up the materials.

Alucraft claimed that it was willing to return to Costain those materials which had not been subject to some input, fabricating or assemblage process. Alucraft said that it was also prepared to deliver to the defendant all manufactured materials whether they were complete or in the course of fabrication, provided Costain paid for them.

Accordingly, the dispute in this application related to the materials provided by Costain to Alucraft which had been the subject of some input, fabricating or assemblage processes and where Costain had made no payment for the value added to the materials by Alucraft's assemblage and processing.

There was no provision in the contract between the parties that governed this situation.

Nathan J referred to the decision of the Full Court of the Supreme Court of South Australia in *Remm Constructions v Allco Nu-Steel* delivered on 10 May 1990 (see Issue #13, at page 53).

Remm involved a similar factual situation. In that case an injunction was granted restraining the sub-contractor from preventing the builder taking possession of materials supplied.

However, His Honour distinguished the *Remm* case on the following grounds:

1. The materials in the *Remm* case were in a ready-form of construction and did not require further fabricating by the sub-contractor.
2. The material supplied by the builder had been paid for in full.
3. There was a provision in the contract between the parties that governed the situation.

His Honour declined to grant the injunction. His Honour said that should Costain be successful on its claim at trial then it could be adequately compensated for by damages.

His Honour also said that Costain had failed to satisfy the balance of convenience test.

- **John Calvert, Minter Ellison, Solicitors, Melbourne.**

Safety - No Duty of Care to Warn of the Obvious

Sarvanidis v Chicago Bridge and Iron Constructors Pty Ltd, Supreme Court of South Australia, White J, 31 July 1989, Aust. Torts Reports 80-292.

In 1983, Sarvanidis was working on a remote construction site in Queensland as a trades assistant to about 25 tradesmen - welders who were engaged in the construction of 6 large tanks for the storage of crude oil.

Sarvanidis' duties included the prompt supply of electrodes to each welder as required. Prior to supplying the electrodes to the welders, he was required to dry them in a oven.

One day, Sarvanidis found that one of his superiors had directed that the table and the drying oven be shifted to a new position inside the storage shed. Sarvanidis assisted the crane driver by pushing the suspended table into position. He also assisted lifting the oven into place. This process delayed him in the supply of electrodes to the welders.

Sarvanidis injured his back when he lifted a fourth 25 kilogram box of electrodes onto the table. His case was that he was forced to make awkward lifts by the restrictions imposed on his feet movements by the new table position. He claimed that he was forced to keep his feet in a stationary position and was not able to move his feet or walk along a clear path. He claimed that he was required to stand in a cramped position and forced to use "this foolish method of lifting heavy boxes", while twisting his back and stretching out his loaded arms, because the area provided by his employer for him to work in was cluttered by coils and by a barrel of rubbish near the corner of the table.

White J noted that if he had done the obvious, as required by commonsense, in pulling away the coils from in front of the table he would not have been restricted in his movements and would have had a clear path between the rows of boxes and the table. Further, that he would not have been required to twist his back when lifting and turning.

Sarvanidis case had two main thrusts. Firstly, that he was not given a safe place to work and/or a safe method of work. Secondly, that he was not warned about the dangers