

He cited a number of authorities including *Robertson & Anor v. Asva Holdings Pty. Ltd. & Anor.*, unreported Supreme Court of Victoria, Fullagar J., 28 September, 1989 (cf. *The Arbitrator* Vol. 9, p. 21).

His Honour indicated that authorities cited supported the four propositions outlined above and refused to restrain the arbitrator from proceedings. His Honour noted that the resolution of the preliminary jurisdictional issue would, in effect, resolve matters in dispute between the parties. The proprietor's application was dismissed with costs.

CONSOLIDATION OF PROCEEDINGS

SUPREME COURT OF VICTORIA: UNREPORTED

Southwell J.

12 July 1990

Melville Homes Pty Ltd v Prime Ceramics Services Pty Ltd & Ors

A DISPUTE arose over the quality of tiling work in a city building. There was an arbitration agreement (i.e. in terms of section 4 (1) of the Commercial Arbitration Act 1984 an agreement in writing to refer future disputes to arbitration) between the proprietor and the builder. There was also an arbitration agreement between the builder and the tiling sub-contractor. The builder was fearful of having different findings made in two separate arbitrations and applied for consolidation of both sets of arbitration proceedings pursuant to section 26 of the Commercial Arbitration Act 1984.

Section 26 (1) of the Act provides that the Court "... upon the application of all the parties to those proceedings ..." may consolidate the proceedings. The proprietor opposed the application and argued that since it did so, the application should not be granted since it was not made by "all the parties".

His Honour referred to the use in the Act of expressions such as "a party", "any of the parties" in contrast to "all the parties". He also referred to the decision of Smart J. in the New South Wales Supreme Court in *K. B. Hutcherson Pty. Ltd. v. Janango Pty. Ltd.*, unreported, 25 May, 1988 (cf. *The Arbitrator* Vol. 8, p. 55). There His Honour was considering an application pursuant to section 25 of the New South Wales Commercial Arbitration Act to extend the ambit of arbitration proceedings. His Honour contrasted the words of section 25, "by the parties" with the words in section 26 "of all the parties" and expressed the view that section 26 required the application to be made by all the parties to the proceedings. Southwell J. again expressed the view he did in *Leighton Contractors Pty. Ltd. v. Kilpatrick Green Pty. Ltd.*, Supreme Court of Victoria, unreported, 11 April, 1990 (cf. *The Arbitrator* Vol. 9, p. 24) that a consistent interpretation should be given by State courts to uniform legislation. To make his point, he suggested that it would be undesirable that a New South Wales Court regarding a dispute in Albury might interpret section 26 differently to a Victorian Court ruling upon a dispute in Wodonga.

In the circumstances, His Honour refused the application for consolidation under section 26 since it had not been made by all the parties and ordered the builder to pay costs.