

1 it was a claim under or arising out of or in any way  
2 related to the contract. Such a claim would to my mind  
3 be beyond the scope of the under and arising out of  
4 connectors. It was held in the Virgin Atlantic Airways  
5 case that a claim based on misleading and deceptive  
6 conduct was a claim arising out of a contract where the  
7 conduct was engaged in during performance of the  
8 contract.

9 Then there's Hi-Fert v. Kiukiang Maritime Carriers  
10 of Justice Emmett where Justice Emmett is referring to at  
11 20 that it's more expansive in connection with a  
12 connector, that the matter of construction is wide enough  
13 to include a claim alleging contravention of Part V of  
14 the Trade Practices Act inducing the contract in  
15 question.

16 Then we have in O'Connor v. Lee Pty Ltd in 1997  
17 Justice Rolfe holding that a clause extending to any  
18 dispute or difference concerning this agreement applied  
19 to a fame on a quantum meruit. Then there's a reference  
20 to Justice Sundberg in Timmick v. Hammock. Perhaps the  
21 point to be made about all of these Your Honour is that  
22 they all take a wide interpretation. It clearly depends  
23 on the factual circumstances and the nature of the  
24 dispute but all the cases that we've tracked down are  
25 cases where the wide approach is confirmed.

26 Your Honour, they're the matters that we would put  
27 in reply.

28 HIS HONOUR: Thank you. In this matter I propose to reserve my  
29 decision and we'll adjourn sine die.

30 MR THOMPSON: Your Honour, may I address one issue just raised  
31 by Mr Garde? He raise the issue of potable water. It's

1        simply irrelevant. The question was simply with regard  
2        to a reticulated water supply potable or not. It has  
3        zero to do with potable or not - - -

4 HIS HONOUR: Well, I don't accept that, Mr Thompson.

5 MR THOMPSON: - - - and the relevant material is found at J24  
6 where the Shire of Kyneton sets out in respect to a  
7 question specifically related to whether tank or bore or  
8 septic sewerage would be available. The council simply  
9 says it's conditional upon reticulated water. Zero to do  
10 with potable. That's simply obfuscation, sir.

11 HIS HONOUR: That's precisely what Mr Garde put to me and I  
12 understand it. In compliance with - the permit had  
13 nothing to do with potable water. Having said that we'll  
14 adjourn sine die.

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