

GATES V THE CITY MUTUAL LIFE ASSURANCE SOCIETY [1986] 160 CLR 1

High Court of Australia – 20 February

FACTS

Gates agreed to upgrade his insurance policy to include total disability cover.

An agent of City Mutual told Gates that the policy would insure him if he was unable to carry on his occupation as a self-employed builder. That statement was false as the policy only insured him if he was unable to be employed by any occupation.

Gates sued City Mutual for breach of contract and misleading and misleading and deceptive conduct under section 52 of the Trade Practices Act.

ISSUE

Had the representation made by the agent of the City Mutual formal a collateral or separate contract?

Should damages for the false statement be reliance or expectation damages?

FINDINGS

There was no collateral contract as the representation made by the agent of City Mutual were not promissory but simply descriptive. The parties did not intend the representation would be contractual.

The damages allowed to Gates were the losses he incurred by entering into the policy. He could not claim for the expectation loss of an insurance payment if he was injured and the representations were true.

QUOTE

“The differences and the similarities between the two approaches are best illustrated by contrasting the damages recoverable for breach of contractual warranty on a purchase of goods with those recoverable for a fraudulent misrepresentation inducing entry into a contract for the purchase of goods on the assumption that the contracts are identical except that in one case the representation amounts to a warranty and in the other it is merely a non-contractual representation. For breach of warranty the plaintiff is prima facie entitled to recover the difference between the real value of the goods and the value of the goods as warranted”.

IMPACT

Representations made before a contract is finalised may be relied upon in an action for breach of a collateral contract, or misleading and deceptive conduct. The damages, which would be awarded, are the losses incurred by the innocent party for relying on the representations.

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The innocent party may be able to recover expectation damages if the representation leads the party to enter into a contract with the party making the representations instead of entering into a contract which would provide the expected benefit

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