

2144 Broke Road v ACN 062 859 358 (previously Austec Panel Systems Australia Pty Ltd) [2010] NSWSC 489

17 May 2010

FACTS:

2144 Broke Road (“the Plaintiff”) wanted to develop land in Pokolbin to construct a wine cellar door and associated buildings. The Plaintiff entered into a contract with ACN 062 859 358 (“the Defendant”) whereby the Defendant was to undertake construction work for the Plaintiff.

The Defendant undertook the construction work however the Plaintiff was not satisfied with the quality of work alleging defects and seeking rectification or damages. In the meantime, the Defendant was placed into liquidation. The Plaintiff sought and was granted leave by the Supreme Court to proceed against the Defendant notwithstanding it being the subject of liquidation.

ISSUES:

Whether the defendant was liable for the defects alleged by the Plaintiff and if the Defendant was so liable, what damages was the Plaintiff entitled to?

FINDING:

The Supreme Court found that the Defendant was liable for the defective workmanship and that the Plaintiff was entitled to damages for the cost of rectification of the defects, relocation while rectification work was carried out but not for damages for loss of opportunity to lease part of the property.

QUOTE:

McDougall J [at 15]:

“There is nothing in evidence to suggest that Beaver Nest and Austec, considered, or had in mind or had any material before them that might have caused them to think, that the plaintiffs (or the ultimate user of the building) might put part of it out to lease. On the contrary, as I understand it, the contemplated purpose of use would have been those which I have summarised: use as a winery with a cellar door sales facility and other associated uses. In those circumstances, I am not satisfied that the claim for loss of rental falls within the second limb of Hadley v Baxendale (1854) 9 Exch 341 at 354, so as to be recoverable as loss that the parties might reasonably have been expected to have had in their contemplation, as the result of a breach of the kind that has occurred, at the time they made their contract.”

IMPACT:

The case illustrates that it is important to ensure the other party is aware of the potential losses if the other party breaches the contract. This may ensure a fuller recovery of the loss in the event of a claim.

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Contracts should be drafted to ensure that the use or purpose is outlined to the parties to the contract so that avenues for recovering loss are preserved.

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