

ALLIANZ V FYNA [2000] NSWSC 657

Supreme Court of NSW – 6 August 2001

FACTS

In 1993 a company named Fyna Formwork Pty Limited (Fyna 1) was registered in NSW. It was renamed Concrete Formwork Pty Ltd (Concrete) on 23 June 1995 and another company with the same directors was registered with the name Fyna Formwork Pty Ltd (Fyna 2) on the same day.

Fyna 2 and Concrete entered into a contract whereby Concrete would supply labour to Fyna 2 to enable Fyna 2 to meet its obligations under its subcontract.

Fyna 1 entered into a contract for Insurance as required under the Workers Compensation Act with Allianz.

In November 1998 Fyna 1 ceased to exist. After 23 June 1995 a number of claims were made by Fyna 2 using the policy and account number of Fyna 1. These documents referred to the pre-existing contract with Fyna 1.

Allianz sought to have the contract enforced to recover unpaid premiums. For some unexplained reason there were premiums of about \$3M outstanding when Allianz issued this proceeding.

ISSUES

Whether Fyna 2 was estopped from denying that there was an insurance contract between it and Allianz.

Whether a contract existed between Fyna 2 and Allianz.

Whether Fyna 2 was liable under S52 of the Trade Practices Act for misleading and deceptive conduct.

FINDING

The representations made by Fyna 2 in various letters and forms were done with the intention of substituting Fyna 2 with Fyna 1. Allianz had merely acted by doing business with whichever company made representations to it.

The type of insurance was not one where the insurance company could decide whether or not to indemnify. The conduct of Fyna 2 by representing that there was a pre-existing contract with Allianz was misleading and deceptive. Fyna 2 had accepted the existence of a contract with Allianz by signing various forms and letters relevant to the insurance.

The documents were held to be sufficient to bind Fyna 2 to contractual representations and commitments with Allianz and it was estopped from denying that it had a contract with Allianz.

QUOTE

“The present case is analogous with one in which a supplier stands ready to supply all-comers in an open market.

Such a supplier pays no attention to the identity of a customer, being concerned only with the factors which are relevant to the structure and terms of the transaction the supplier is prepared to conclude with virtually anyone. The supplier does business with whomever comes forward and fulfils its requirements.”

IMPACT

Reconfirms the principle that a contract need not be formed by a clear offer and acceptance but can be implied by the conduct of the parties. Fyna 2, by carrying on the relationship with Allianz sufficiently represented that they intended to carry on the contract as was agreed between Allianz and Fyna 1.

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