

ASTLEY V AUSTRUST LIMITED [1999] HCA 6

High Court of Australia - 4 March 1999

FACTS

Austrust carried on business as a trustee company and in 1984 became the trustee for a unit trust that traded as a piggery business. The trust failed and Austrust suffered substantial losses as the liabilities of the unit trust exceeded the assets of the unit trust.

Austrust alleged that their former solicitors had given negligent advice and sued the solicitors for breach of contract and negligence.

The solicitors argued that their liability should be reduced as Austrust was also negligent when it became the trustee of the unit trust.

ISSUES

If the Defendant has contractually agreed to protect the Plaintiff can liability be reduced for the Plaintiff's contributory negligence?

How would a Defendant protect itself?

FINDING

The Court held that liability for a lack of care in breach of contract is not reduced by contributory negligence, unless the contract so expressly provides.

QUOTE

Chief Justice Gleeson, Justices McHugh, Gummow and Hayne who delivered the majority judgement said:

“By its own voluntary act, the defendant has accepted an obligation [contract] to take reasonable care and, subject to remoteness rules, to pay damages for any loss or damage flowing from a breach of that obligation.

If the defendant wishes to reduce its liability in a situation where the plaintiff's own conduct contributes to the damage suffered, it is open to the defendant to make a bargain with the plaintiff to achieve that end.” - paragraph 86 of [1999] HCA 6

IMPACT

A contractor or service provider should provide for a reasonable reduction for contributory negligence by the principal and vice versa.