

**AUSTRALIAN DEVELOPMENT CORPORATION PTY LTD V WHITE CONSTRUCTIONS LIMITED & ANOR [2001] NSWCA 9**

Court of Appeal - 9 February 2001

**FACTS**

ADC entered into a building contract in 1987 with White Constructions Pty Ltd (ACT), for the construction of an office block and a residential tower known as the Quadrant project in Canberra. ACT was a wholly owned subsidiary of White Constructions Limited (WCL), which was then a wholly owned subsidiary of White Industries Ltd (WIL). In November 1986 WIL was privatised and in October 1987 WCL became a listed company whilst ACT remained a wholly owned subsidiary of WCL. The contract was expressly between ADC and ACT even though negotiations were initially with WIL.

Work by ACT fell seriously behind schedule following labour unrest partly caused by the actions of employees of WCL and the site was closed for 6 months by industrial action.

ADC terminated the contract and sued ACT for breach of contract, WIL on basis of being the undisclosed principal of ACT, breach s52 Trade Practices Act and negligent misrepresentations during pre-contract negotiations, and WCL also for breach of contract.

**ISSUES**

Whether ACT was acting as an agent for WIL (undisclosed principal).

Whether WIL had misled ADC as to the viability of the contract price which ADC relied upon in entering into the contract and whether that negligent misrepresentation under s52 TP Act was the causation of damages.

**FINDING**

ACT was found liable for breach, with damages of approximately \$30million. WIL's failure to disclose its restructuring plans was found not to be a breach of s52 TP Act nor did it breach any duty of care. WCR was found not to have induced any breach of contract by ADC.

**QUOTE**

Handley JA said:

*"Its [ACT] conduct was contrary to proper industrial practice, was unreasonable in the context of the contract, and in this respect, it failed to prosecute the project diligently ... "*

*"ADC has not established that [WCL] acted with the intention of bringing about what he knew was a breach of contract by ACT"*

## **IMPACT**

Even the most experienced businessperson should take considerable care to ensure that they are fully aware of the party they are entering into a contract with. In this case the ADC had been aware that the company they would contract with would not be WIL or WCL and had accepted the risk of ACT not being able to meet its obligations.

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