

BEATON V MCDIVITT (1987) 13 NSWLR 162

Supreme Court of NSW - 14 October 1987

FACTS

McDivitt owned some land and agreed that Beaton could occupy a block of his land. At that time, it was intended that the block would be rezoned and transferred to Beaton in about two years' time.

It was agreed shortly after that Beaton would maintain a road in the land.

Beaton built an illegal structure on the land and the council told McDivitt to remove it. McDivitt told Beaton to vacate the land so the structure could be removed. Beaton refused and sued to enforce the agreement.

ISSUES

Was the agreement between the parties supported by consideration?

Was the contract frustrated by the fact that the property was not rezoned?

Would it be unconscionable for McDivitt to rely on his legal rights and force Beaton from the land?

FINDING

There was sufficient consideration to support the contract.

One judge said the contract was 'frustrated'.

It was not unconscionable for McDivitt to force Beaton from the land.

QUOTE

Kirby P said:

"By our law, consideration is an essential requirement for an enforceable contract. Without consideration, a promise is unenforceable at law.

The modern theory of consideration has arisen from the notion that a contract is a bargain struck between the parties by an exchange". – page 168 of CF (1987) 13NSWLR

IMPACT

Informal and vague arrangements can be held to be contracts.

In this case McDivitt was lucky. If one judge had not found that the contract was frustrated, then the informal arrangement would have been a binding contract.

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