

BETTER SPRINKLER SYSTEMS PTY LTD V KOUSSIDIS [1999] SASC 291

Full Court of the Supreme Court of SA – 5 July 1999

FACTS

Koussidis ran a building business which over the years operated as a partnership or a company.

Before 1985 he had maintained a personal account with the Premier Service Station in Adelaide. In 1985, Better Sprinkler purchased the service station and the personal account with Koussidis was maintained.

During the following years employees of Koussidis, including his son, purchased petrol using the personal account. The building company controlled by Koussidis which had been paying the accounts went into liquidation. Better Sprinkler sued

Koussidis for \$30,000 owing for petrol sold to Koussidis and his employees and son.

Koussidis claimed that the original contract between Better Sprinkler and Koussidis had been novated to the company in liquidation and the outstanding balance was owed by that company.

ISSUES

Had the contract between Better Sprinkler and Koussidis been novated so that the company was the debtor?

FINDING

There was no conclusive evidence to prove that Better Sprinkler agreed to a novation of the contract between it and Koussidis to the company.

An implied novation may occur where a new contract is substituted for the original contract and both parties consent to this arrangement.

QUOTE

Bleby J said:

“I am not persuaded that the necessary inference against the plaintiff which can be drawn from any individual fact to which I have referred or from those facts taken collectively.

The one recurring feature throughout the whole period of the account is that it remained in the name of the defendant personally, that throughout that period he continued to sign the statements on delivery of goods and services to him, that he was aware of others using the account and that he never suggested to the plaintiff that the account was maintained in an incorrect name.

For these reasons I would dismiss the appeal.” – paragraph 42 of [1999] SASC 29

IMPACT

When a party to an existing contractual relationship it is important to make sure the proper parties to the contract are clearly identified. If a new entity is to take responsibility another person's obligations under a contract, then the other party must be notified and consent to the change of the party.

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Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com