

CIVIC TRANSPORT SERVICES PTY LTD V WACHER PTY LTD [1999] VSC 290

Supreme Court of Victoria – 17 August 1999

FACTS

Nucleus was the author and owner of a software package called CARRY, which it customised for use by Civic. There was a service agreement between Nucleus and Civic for 1992. In October 1992 the business of Nucleus was sold to Wacher though the employees of Nucleus continued to work for the business. A representative of Wacher met the director of Civic shortly after taking over the Nucleus business and told the director that Wacher would look after the future needs of Civic.

In November 1992 the Civic computer system crashed and when Civic attempted to reinstall the customised version of CARRY they found out that their backups had not been successful. Civic had received some advice over the telephone from Wacher when conducting a backup. Civic issued proceedings against Wacher claiming damages for negligence and breach of contract.

ISSUES

Was the service agreement between Nucleus and Civic novated so that Wacher became responsible to Civic for the obligations of Nucleus under the service contract?

Did Wacher owe a duty of care to Civic to provide proper software support services and advice to Civic?

FINDING

There was no evidence to suggest that the service agreement between Nucleus and Civic had been novated or that the parties even intended to novate the service agreement.

Wacher did not owe a duty of care to Civic as it did not know and could not have been expected to know or believe that Civic did not adequate computer skills and would rely on its service and advice when backing up the software.

The owner of a computer system is responsible for the basic administration of their own computer system and should ensure that they had adequate skills to administer the computer system.

QUOTE

Hansen J said:

“[S] said in evidence that he had no formal training in computers, that he did not read the manuals which the hardware and software suppliers had given him and had not attended any course concerning the computer system.

The tenor of his evidence was that he relied on others for advice. [S]’s attitude of reliance was not a satisfactory discharge of his responsibilities, as a computer owner, for the use and management of his

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computer system, as such an approach carried a significant danger of loss both in terms of the system and Civic's business." – paragraph 137 of [1999] VSC 290

"The owner of a computer system needs not merely to take care in using the system but has positive responsibilities to observe. There was a reference in the evidence to the functions of a housekeeper or system administrator and the necessity for a computer owner to carry out the functions of such a person." – paragraph 140 of [1999] VSC 290

IMPACT

If a party to a contract is to be replaced by another party to the contract, then it should not be assumed that the obligations of the original party will be transferred or assumed by the new party. In such situations a novation or a new contract should be prepared.

While computer owners are entitled to rely on the expertise of computer specialists, they are still expected to have a basic understanding of their computer systems and be able to properly administer their computers. The scope of a duty of care owed by a computer specialist to a customer will be influenced in part by the specialist's understanding of the skill and experience of the customer.

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