

**E V BOB PTY LTD V OAKGRID PTY LTD [2000] NSWSC 85**

Supreme Court of NSW – 18 February 2000

**FACTS**

Oakgrid manufactured and sold clothing to its own shops or franchisees. One of its customers was EV Bob. Oakgrid and EV Bob were negotiating a five-year licence and an agreement was drawn up but neither executed. EV Bob had paid \$30,000.00 to Oakgrid in anticipation of the licence agreement being executed. The agreement was never executed and EV Bob sued Oakgrid for the return of the \$30,000.00.

The Magistrate who first heard the case decided that the \$30,000.00 was preferable to the proposed agreement and ordered that Oakgrid repay the \$30,000.00. Oakgrid appealed to the Supreme Court.

**ISSUES**

Did EV Bob have a claim against Oakgrid for unjust enrichment?

**FINDING**

Oakgrid had been unjustly enriched at the expense of EV Bob and it was fair that the \$30,000.00 be refunded to EV Bob.

**QUOTE**

Brownie AJ said:

*“It seems to me that the only real point that the appellant or present plaintiff has is an argument that the enrichment*

*was not unjust, or that it was not unjust to the extent of \$30,000.00. If the magistrate had made appropriate findings of fact, and if the magistrate had found that enrichment was unjust to some lesser extent, that is to say unjust as to a certain number of dollars being less than 30,000, then I am inclined to think that such a finding would have been unassailable on appeal.*

*But his Worship made no such finding. To the contrary, he proceeded on the assumption that the \$30,000.00 was paid in anticipation that the parties would enter into one contract, which for brevity might be called the licence agreement or the proposed licence agreement, and that whilst that was going on the parties had other transactions the subject of no express finding. Perhaps there were other contracts, for example for the sale and delivery of individual items; perhaps there was applied [sic – an implied] contract; perhaps there was some other course of dealing, it really does not matter.”*

**IMPACT**

Advance payments made during contract negotiations can be refundable.

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If a payment is made before a contract is finalised, then the party making the payment and the right to be refunded are clearly agreed between the parties.

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