

ESANDA FINANCE CORPORATION LIMITED V PEAT MARWICK HUNGERFORDS [1997] 142 ALR 750

High Court of Australia - 18 March 1997

FACTS

Peat Marwick Hungerford (“Peats”), an auditor, was alleged to have failed to comply with accounting standards when auditing the financial accounts. Esanda relied on the audited accounts and audit report when lending money to Excel.

Esanda sought damages for negligence against Peats and asserted that it would not have entered into the loan transactions but for its reliance on the audited accounts of Excel.

ISSUES

In an action for negligence for pure economic loss is it sufficient to plead that it was reasonably foreseeable by an auditor that creditors and financiers of a corporation might rely on the audited accounts of the company in entering into financial transactions involving that corporation?

Does an auditor owe a duty of care to every member of the class comprising creditors and financiers of the corporation, where financial accounts have audited?

FINDING

In actions for negligence claiming economic loss is suffered in consequence of a statement made or advice given by a defendant the possibility that a member of class might rely on the statement or advice and thereby suffer loss has never been held sufficient to support recovery. Esanda had not proven that Peats owed a duty of care to it to audit the financial accounts with due care and skill.

QUOTE

Brennan CJ said:

“The uniform course of authority shows that mere foreseeability of the possibility that a statement made or advice given by A to B might be communicated to a class of which C is a member and that C might enter into some transactions the result thereof and suffer financial, loss in that transaction is not sufficient to impose on A a duty of care owed to C in the making of the statement or the giving of the advice. In some situations, a plaintiff who has suffered pure economic loss by entering into a transaction in reliance on a statement made or advice given by a defendant may be entitled to recover without proving that the plaintiff sought the information or advice. But in every case, it is necessary for the plaintiff to allege and prove that the defendant knew or ought reasonably to have known that the information or advice would be communicated to the plaintiff, either individually or as a member of an identified class, that the information or advice would be so communicated for a purpose that would be very likely to lead the plaintiff to enter into a transaction of the kind that the plaintiff does enter into and that it would be very likely that the plaintiff would enter into such a transaction in reliance on the information or advice and thereby risk the

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incurring of economic loss if the statement should be untrue or the advice should be unsound. If any of these elements be wanting, the plaintiff fails to establish that the defendant owed the plaintiff a duty to use reasonable care in making the statement or giving the advice”

“Mere foreseeability of loss by reason of its reliance upon the audited accounts was not sufficient to establish the requisite degree of proximity between the appellant and the respondent”.

IMPACT

A person providing advice or information will not be found liable for a negligent mis-statement to a third party unless the third party was a person whom the advisor could have reasonably comprehended when providing the information.

A person providing information which may be relied upon by third parties should include a disclaimer to the effect that none of the information should be relied upon apart from the person originally entitled to use the information.

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