

**FAR HORIZONS PTY LTD V MCDONALD'S AUSTRALIA LTD [2000] VSC 310**

Supreme Court of Victoria – 18 August 2000

**FACTS**

Far Horizons Pty Ltd (“Far Horizons”) conducts two McDonald’s restaurants at Fountain Gate Shopping Centre and in Endeavour Hills in Melbourne, under a licence entered into with McDonald’s Australia Ltd (“McDonald’s”).

McDonald’s decided to open a new store in the Fountain Gate Shopping Centre, 800 metres from Far Horizons’ store.

McDonald’s also decided to open a new store about 4.5km from Far Horizon’s store in Endeavour Hills.

Far Horizons commenced proceedings seeking damages for breach of an implied duty not to act in dishonestly, unfairly or in bad faith by granting licences for other stores which would prejudice significantly the profitability of Far Horizon’s stores.

**ISSUE**

Whether there was implied duty to act honestly, fairly and in good faith.

**FINDING**

The Court found that there was an implied duty to act in good faith or reasonably and not capriciously or for some extraneous purpose.

The Court held that, on the facts, Far Horizons had failed to discharge the onus of proof that McDonald’s had exercised its powers for an extraneous purpose, namely, to punish Far Horizons or to force him to leave the McDonald’s system.

Therefore, McDonald’s had not breached its implied duty of good faith.

**QUOTE**

Byrne J said at paragraph 120:

*“I do not see myself at liberty to depart from the considerable body of authority in the country which has followed the decision of the New South Wales Court of Appeal in Renard Constructions (ME) Pty Ltd v Minister for Public Works.*

*I proceed, therefore, on the basis that there is to be implied in a franchise agreement a term of good faith and fair dealing which obliges each party to exercise the powers conferred upon it by the agreement in good faith or reasonably, and not capriciously or for some extraneous purpose. Such a term is a legal incident of a contract.”*

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Byrne J continued at paragraph 121:

*“Counsel for the plaintiffs then submitted that the various terms pleaded... are manifestations of such an implied term. Against this, it was put that the operation of the implied obligation in a given case must have regard to the express agreement between the parties, negotiated at arms’ length and not on unequal terms and to the relationship which this creates.*

*It cannot operate to deny a party the right to exercise a power conferred by the contract for the promotion or protection of its legitimate interests, in circumstances where that party seeks to exercise that right to protect or promote those interests.”*

## **IMPACT**

This case stands for the proposition that an implied duty of good faith obliges each party to a contract to exercise the powers conferred upon it in good faith or reasonably, and not capriciously or for some extraneous purpose.

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