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GSA GROUP PTY LTD AND ORS V. SIEBE PLC AND ORS (1993) 30 NSWLR 573

Supreme Court of New South Wales – 27 April 1993

FACTS

This was a hearing in which the GSA as Plaintiff were contesting the court's provisional view, expressed in an earlier judgment, that it was entitled only to nominal damages only in respect of the Siebe's repudiation of the distributorship contract.

GSA conceded that damages could only be awarded if it had suffered loss from increased prices or loss of a market after the breach of contract by Siebe.

ISSUES

Was there a method either express or implied prescribed by the distributorship contract whereby the price could be determined for the sale of the goods, for the purposes of the distributorship contract? There was nothing on this issue expressly outlined in the distributorship contract.

Was there a term in the distributorship contract requiring the parties to negotiate a price in good faith?

FINDING

1. There was no express or implied term in the distributorship contract about determining prices. The behaviour of the parties showed that there was no agreement about determining prices for the life of the distributorship contract. Prices were only set when GSA made each order for goods from Siebe.
2. A court should not import into a contract between commercial parties of equal bargaining power an obligation of good faith and fairness in the performance of the contract. And if such an obligation were generally implied, it could be negated by the conduct of the parties in the course of their negotiations. Any obligation of good faith, assuming it existed, would be mutual, so that if one party breached it, the other would cease to be bound by it.

QUOTE

Rogers CJ (Commercial Division) said

"Against a trend of general obligation of good faith, fairness, or reasonableness, there have been judicial comments to the effect that the courts should be slow to intrude into the commercial dealings of parties who are quite able to look after their own interests.

The courts should not be too eager to interfere in the commercial conduct of the parties, especially where the parties are all wealthy, experienced, commercial entities able to attend to their own interests." – page 570 of (1993) 30 NSWLR 573

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IMPACT

Parties to contracts are not bound by an implied term that they are required to negotiate in good faith. The Court in this case recognised that eventually Australian law may recognise a duty to negotiate in good faith.

A Court will be reluctant to imply a contract term about pricing and the parties should ensure that a pricing term is expressly included in the contract if prices are to follow a formula for a fixed period.

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