

LEE GLEESON PTY LIMITED V STERLING ESTATE PTY LTD [1991] 23 NSWLR 571

Supreme Court of NSW - 30 May 1991

FACTS

A builder issued proceedings against a property owner (“the owner”) for unpaid building work.

The property owner’s bank informed the builder that it had authority from its customer to make payments on behalf of that customer to the builder.

The customer cancelled those instructions.

The builder had been concerned that the property owner could not afford to pay for the building works. The builder claimed that the bank had agreed to pay it for the building work. The bank held mortgages over the land where the building works was conducted.

FINDING

The bank had a duty to inform the builder of the change in the circumstances.

When a bank customer has authorised it to reveal to a third-party information, which would otherwise be confidential and the customer then changes its instructions to the bank, it is implied to authorise the bank to advise the third party of those changed instructions.

QUOTE

Brownie J said:

“The bank’s customer had authorised the bank to write the letter of 13 March and the customer delivered that letter to the builder on behalf of the bank; that is, the customer had authorised the bank to reveal information which would otherwise have been confidential to the owner and the bank; and I consider that it follows that if the customer changed its instructions to the bank, it impliedly authorised the bank to advise the builder of those changed instructions”.

“I accept the submission made on behalf of the builder that, if the owner had sought an injunction to restrain the bank from disclosing to the builder the bank’s changed instructions, that application for an injunction would have failed, because the customer had authorised the bank to disclose its instructions as at 13 March, which authorisation contained an implied authority to disclose to the builder any relevant change in those instructions”

“For it (the bank) to remain silent, in the circumstances where its instructions from the customer had changed, allowed the customer to engage in sharp practice against the builder, described in stronger terms by the referee and to that extent, independently of the position at common law, S52 seems to me to have required the bank to disclose to the builder its changed instructions. That is, in these circumstances, S52 imposed on the bank a duty of disclosure”.

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IMPACT

Sometimes silence about a change of circumstances can be found to have breached section 52 of the Trade Practices Act if facts come to their attention which may mislead or deceive another person are not properly communicated to that party.

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