

MCCOY CONSTRUCTION PTY LTD. V DABROWSKI (2000) QSC 385

Supreme Court of Queensland 26 October 2000

FACTS

McCoy built kit homes which were open for display to members of the public. McCoy had constructed a home for Dabrowski but there were alleged defects in the building work.

When the parties failed to resolve their differences in respect of the construction work, the case was listed before the Building Tribunal. Prior to the hearing, Dabrowski stood before McCoy's premises and told visitors to the premises that he had a contract with McCoy for the construction of his home and that there was a dispute that was currently awaiting determination before the Building Tribunal.

McCoy made an application to the court to restrain Dabrowski from engaging in a conduct that constituted nuisance.

ISSUES

What factors should the Court take into account in considering whether to grant an interlocutory injunction to prevent the nuisance continuing?

FINDING

The facts inferred that there was a serious question to be tried because Dabrowski was not merely giving helpful advice to potential home purchasers, but he had an intention to denigrate McCoy's business.

In considering on the balance of convenience whether the injunction should be imposed, the court found that Dabrowski's conduct had the potential of causing McCoy to lose business but that Dabrowski would not suffer any loss by being restricted from speaking to intending visitors at the display homes.

Although Dabrowski's conduct was lawful, the circumstances of the acts extended to McCoy's land and interfered with McCoy's comfort and enjoyment of the land.

Dabrowski could therefore use the roadways and footpaths outside McCoy's premises, but he would be restricted from communicating to intending visitors of McCoy's display homes of a complaint of bad workmanship by McCoy or of facts from which such an inference could be reasonably drawn.

QUOTE

Jones J said:

“One of the features of nuisance claims is that a nuisance can occur notwithstanding that the conduct complained is not unlawful. Such conduct may become nuisance when the circumstances of lawful acts extend to the land of a neighbour and interfere with the neighbour's comfort and enjoyment of the land.”

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IMPACT

An interlocutory injunction is granted when the facts infer that there is a serious question to be tried and that on the balance of convenience, an interlocutory injunction should be imposed.

The power to impose an injunction is not limited to unlawful acts but may extend to lawful acts that constitute a nuisance. A lawful act of a person becomes a nuisance when the circumstances of the act interfere with the neighbour's comfort and enjoyment of the land.

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