

MUSUMECI AND ANOR V WINADELL PTY LTD (1994) 1084 93

Supreme Court of New South Wales – 4 August 1994

FACTS

The Plaintiffs were tenants of a shop leased from the landlord Defendant. The Plaintiffs claimed that the terms of the lease were varied so as to provide for a reduction of rent for the premises.

ISSUES

1. Was there an agreement between the parties for rent to be reduced by one third?
2. Was the agreement between the parties for the reduction of rent supported by consideration from the Plaintiffs?

FINDING

1. There was evidence that there was an agreement that the rent would be reduced by one third, even though it was difficult to show when an exact offer and acceptance had occurred.
2. The court stated that a practical benefit or detriment could suffice as consideration. A practical benefit was given to the landlord defendant, who despite receiving less rent, was able to obtain the benefits of a full shopping centre and avoid a shop vacancy.

QUOTE

Santow J said:

“The practical benefit here, was that the lessor had greater assurance of the lessees staying in occupation and maintaining viability and capacity to perform by reason of their reduction in rent, notwithstanding the introduction of a larger competing tenant.

The practical detriment to the Lessees lay in risking their capacity to survive against a much stronger competitor, by staying in occupancy under their lease, rather than walking away at the cost of damages.” – pages 31-32 of 1084/93

IMPACT

The Court found that the variation of the lease was valid.

A Court will find sufficient consideration where each of the parties can show new practical benefits or disadvantages which are avoided by the variation.

Parties should note that this consideration may exist even though there is no further monetary award present. Consideration may be found where there is a detriment avoided.

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com