

NEWTON HEATH PTY LTD & CONNELL V. 3AW SOUTHERN CROSS RADIO PTY LTD [2000]
VSC 103

Supreme Court of Victoria – 30 March 2000

FACTS

Connell, a barrister, and Campbell, a solicitor, conducted a morning show on radio station 3AW. The original contract engaging Connell and Campbell had been between 3AW and a trustee company that directly retained Connell and Campbell. Connell's own company, Newton Heath, was a shareholder in the trustee company.

During late 1991, difficulties between Connell and other 3AW staff members began to cause concerns for 3AW management.

Therefore, the manager of 3AW gave Connell and Campbell separate contracts to sign to replace the original contract.

Campbell signed his contract, but Connell had not signed his contract when 3AW decided that they should withdraw the new contract and dismiss Connell. During December 1991, Connell sued for breach of the new contract and alleged that he had orally accepted the new contract or that acceptance could be inferred by his conduct in continuing to present the morning show after receiving the new contract.

ISSUES

Had Connell orally accepted the proposed contract offered by 3AW?

Did the conduct of the parties' lead to an inference that Connell had accepted the proposed contract?

FINDING

The Court preferred the evidence of the 3AW manager and found that Connell had not orally communicated his acceptance to 3AW.

The evidence indicated that 3AW expected that Connell would not like some of the contract clauses and were waiting for his response to finalise the contract. Also, the evidence suggested that 3AW had told Connell that they would retain him on an interim basis until the new contract was finalised. Therefore, the conduct did not suggest that Connell had accepted the contract.

QUOTE

Eames J said:

"In my opinion, the conduct of Connell can not lead to the conclusion, as an inference from that conduct, that the proposed agreement had been accepted and become binding on the parties.

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This is not, however, a case where the question whether an offer has been accepted must be resolved by inference because there is no direct evidence of what was said by the parties, nor is it a case where the parties' conduct is only consistent with there having been an agreement reached between them."

IMPACT

A person alleging that an offer has been accepted by oral communications or by conduct has a difficult task to convince a Court that a contract had been formed.

That is particularly the case if there is a substantial gap, in this case nine years, between the trial and the relevant events.

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