

ORACAL INT. V. INTERNATIONAL PROFESSIONAL TRADERS [1999] NSWSC 753

Supreme Court of New South Wales – 28 July 1999

FACTS

Oracal supplied cordless telephones to Tandy and began negotiations to also supply computers to Tandy. As Oracal did not at the time deal in computers it purchased computers from International Professional Traders (trading as Datcom). Datcom was involved in discussions with both Oracal and Tandy but was not in a contractual relationship with Tandy.

However, Datcom and Oracal were at the time negotiating a contract to supply computers to Tandy as a joint venture with profits to be split evenly.

Oracal was very slow at paying Datcom for the supply for computers. Eventually Datcom stopped negotiating with Oracal and began to supply computers directly to Tandy. Oracal issued proceedings against Datcom and sought an injunction to prevent Datcom selling computers to Tandy.

ISSUES

Was Oracal entitled to an injunction to - prevent Datcom breaching fiduciary obligations to Oracal by dealing directly with Tandy; and/or prevent Datcom breaching a duty of confidence owing to Oracal?

FINDING

The balance of convenience was against awarding an injunction because - Oracal would have difficulty proving that there had been a breach of fiduciary duty by Datcom as there was no final contract between the parties and either party could discontinue the relationship at will.

The nature of the information that Datcom allegedly received from Oracal was not confidential information and there was no express agreement that the information was to be treated as confidential.

QUOTE

Justice Bryson

“It is important when the Court is asked to enforce some contractual or analogous obligation ... to consider whether the whole skein of contractual obligations on both sides has been complied with or can be enforced.” paragraph 14 of [1999] NSWSC 753

IMPACT

The Courts will not impose fiduciary duties or duties of confidence on parties negotiating a possible contract unless the parties expressly agree to the existence of these duties. The contractual relationship between the parties in this case was simply that of seller and purchaser.

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If a party negotiating a possible contract wants to stop the other party from behaving in a manner inconsistent with that possible contract, then serious consideration should be given to executing confidentiality agreements and/or restraint of trade clauses before negotiations commence.

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