

ORAKA PTY LIMITED & ANOR V. LEDA HOLDINGS LIMITED (1997) ATPR 41-558

Federal Court of Australia - 4 April 1997

FACTS

Woolworths grocery chain wished to establish marketplace shopping centres; one proposed site was near Rosemeadow. This site was subsequently sold to Leda Holdings. The person responsible for leasing the centre was confident of the successful leasing of the majority of shops due to the favourable response that was elicited when Woolworths intended to construct. The person responsible for leasing contacted Oraka Pty Ltd who was the master NSW franchises for 'Wendys' ice cream shops.

Wendys' shops required substantial passing crowds of shoppers for their success and Leda was prepared to give Wendys exclusivity for the sale of ice-cream and doughnuts at the centre.

Oraka was allegedly told on several occasions that things were going to plan, and was subsequently told that the premises would be full when it opened, however this was not the case. A Letter of Intent, indicating interest to take a lease was subsequently signed. Leda and Oraka attended a meeting where terms of the lease were to be discussed, and Oraka gained the view that there was nothing to worry about even though if the true position was known it would have been unlikely that the lease would have been entered into.

ISSUE

Had Leda Pty Limited contravened s52 of the Trade Practices Act 'misleading and deceptive conduct' by failing to correct the erroneous views of Oraka Pty Limited?

FINDING

It was found that the Respondent did breach s52 by failing to correct a wrong impression.

QUOTE

Justice Burchett said:

"In my opinion the execution of these [lease] documents not only followed hard upon the holding of the [last] meeting..., but was induced by the specific representation made by Leda at that meeting.

But if [Leda] had remained silent, as the respondent asserts he did and the documents had been executed in those circumstances, the respondent's case would have been no better. For it is clear that there had been no correction, during the whole of the month preceding the meeting, or at the meeting, of what I am satisfied were the earlier optimistic forecasts put to [Oraka], although Leda knew that the prospects for the letting of the shops at the shopping centre had turned out to be extremely poor. ...I am satisfied that at no time was [Oraka] told enough to correct the wrong impression ...

In the circumstances, Leda was guilty of engaging in misleading and deceptive conduct... There was plain and obvious cause to account for the losses, being the state of the shopping centre, in which numbers of

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other tenants were also complaining, and in my opinion the damages proved by Oraka are attributable to the contravention's of s52 that I have found..."

IMPACT

In the situation where leasing of a new development is occurring, every effort should be made to ensure that only accurate statements are relied upon and made.

If a wrong impression is gained at some stage prior to entering into the lease, by the potential lessee then every effort should be made to clarify that impression.

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