

SUTTON V AJ TOMPSON PTY LIMITED (IN LLO) (1987) ALR 233

Federal Court of Australia – 21 May 1987

FACTS

The Applicants purchased a business from the respondent KLK Manufacturing Pty Limited. The Applicants alleged that, prior to the purchase, a number of misrepresentations were made by the respondents regarding costs of inputs, average sale price to distributors, and average number of units sold per month.

ISSUE

The effect of the representations on the mind of the Applicants and their degree of reliance on those representations and the state of knowledge of the person who is misrepresenting.

FINDINGS

Once the contract is entered no further representations may be actionable. To be knowingly concerned in the contravention, the respondent must be an intentional participant, with full knowledge of the essential elements of the contravention.

QUOTE

Forster, Woodward & Wilcox JJ:

“...in a case such as the present, where the allegedly misleading conduct consists in representation directed specifically towards a particular person or group of people, with a view to making a single specific sale, it is more helpful to recall the principles of law ...

Although these related to the common law action of deceit, they are, in our view, equally applicable to breaches of s52 of the Act. The principles are:

(i) Notwithstanding that a representation is both false and fraudulent, if the representee does not rely upon it he has no case.

(ii) If a material representation is made which is calculated to induce the representee to enter into a contract and that person in fact enters into the contract there arises a fair inference of fact that he was induced to do so by the representation.

(iii) The inference may be rebutted, for example, by showing that the representee, before he entered into the contract, either was possessed of actual knowledge of the true facts and knew them to be true or alternatively, made it plain that whether he knew the true facts or not he did not rely on the representation.

(iv) The representation need not be the sole inducement. It is sufficient so long as it plays some part, even if only a minor part, in contributing to the formation of the contract.”

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IMPACT

To claim the benefit of s52 of the Trade Practices Act, you must be truly influenced by a misrepresentation of the Vendor or Vendor's Agent, prior to entering into the contract.

Misrepresentations made after entering into the contract are not actionable.

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