

**ABB POWER GENERATION LTD v CHAPPLE & ORS
[2001] WASCA 412**

Supreme Court of Western Australia Court of Appeal – 14 December 2001

FACTS

ABB Power Generation Ltd ('ABB') was engaged to supply a piece of industrial equipment known as an "electrostatic precipitator". ABB entered into a subcontract with CIS to clad the precipitator with insulating lagging. CIS in turn engaged a business, Freemantle Scaffolding, carried on by Mr Chapple ('Chapple'), to erect scaffolding around the precipitator so as to enable CIS to install the lagging. Chapple had no contractual relationship with ABB. ABB later notified Chapple that it wished to design and build the precipitator in such a way that tubular scaffolding, which is slower and more expensive to erect, would be appropriate and that other specialized scaffolding work would also be necessary. During the course of the construction of the scaffolding, there were conversations on site between ABB and Chapple, during which ABB gave instructions to the effect that the extra work was necessary, and that questions of payment would be addressed later. As a consequence of the instructions, Chapple incurred greater expense than it had allowed in its contract with CIS in carrying out the additional work. Chapple issued proceedings against ABB upon a quantum meruit, the Supreme Court holding that Chapple was entitled to the reasonable cost of the work. ABB appealed.

ISSUE

Whether Chapple was entitled to claim upon a quantum meruit.

FINDING

The Court of Appeal held that the performance of the scaffolding work, including the extras required, conferred a benefit on ABB and in the circumstances it would be unjust if ABB did not pay for the extras. Further, the law of restitution will encompass a claim for reasonable compensation to be paid to a plaintiff who has supplied materials to, done work for otherwise benefited, a defendant who has accepted the benefit upon the understanding that the plaintiff would be paid for the services rendered. What is necessary is the capacity to discern the facts of the particular case that the defendant did receive a benefit, that the benefit was accepted and not rejected, and that in all the circumstances it would be unfair or unjust that the plaintiff should be left without reasonable recompense for the work done. Furthermore, the Court of Appeal held that it is not necessary for the defendant who receives a benefit to have a reasonable expectation to have to pay for it. The appropriate inquiry is whether the recipient of the services, as a reasonable person, should have realized that a person in the position of the provider of the services would expect to be paid for them and did not take a reasonable opportunity to reject those services.

QUOTE

Murray J held at paragraph 20: "As the judgments of the majority in *Pavey* make clear, what is a "benefit" in the hands of the defendant must be judged objectively from the position of the defendant. There is no need for the benefit to be purely of an economic kind or one which is capable of being reduced to a monetary value. A requested or accepted service will generally be accepted by the Court as being of benefit to the defendant and will certainly prevent the plaintiff from being regarded as a mere volunteer, providing services in effect as a gift: see also *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221 per Byrne J at 257-259."

Further, Templeman J, who agreed with Murray J said in the context of the requirement that Chapple would expect payment from ABB: "It may be, as Murray J suggests, that this requirement is not essential. However, if the defendant, as a reasonable person, did not appreciate that the plaintiff would look to him for payment, it would probably be difficult to make out a case of unjust enrichment. That is why Byrne J in *Brenner v First Artists' Management Pty Ltd & Anor* [1993] 2 VR 221, said that "the appropriate enquiry" was whether the recipient of the relevant services should have realised he would be expected to pay for them."

IMPACT

This case confirms the proposition that for "the appropriate enquiry" for the purposes of determining an entitlement to quantum meruit is whether the recipient of the relevant services should have objectively realised he would be expected to pay for them.

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