

RICKARD CONSTRUCTIONS & ANOR V RICKARD HAILS & MORETTI & ORS
[2004] NSWSC 1041
Supreme Court of New South Wales – 17 December 2004

FACTS

Rickard Constructions constructed a pavement for a container depot at Port Botany. The pavement was designed by Rickard Hails and Moretti ('Rickard Partners') and eventually leased out to Mayne Nickless ('Mayne'). The container depot was to be used for the storage of shipping containers and involved the use of heavy forklift trucks, to shift and place the containers. The pavement failed within three days of being put into service, when substantial portions of it collapsed. Mayne and Rickard Constructions agreed that the rectification works would constitute a variation under the building contract. However, Mayne were not to pay Rickard Constructions in cash for the variation. Instead they agreed to assign to Rickard Constructions any right that they might have against the designer of the pavement to recover the amount payable in connection with the variation.

Rickard Constructions submitted that they were entitled to damages for breach of contract, breach of duty of care and misleading and deceptive conduct from Rickard Partners. Rickard Partners submitted that the cause of action was not assignable at law and, therefore, were not liable to pay damages to Rickard Constructions.

ISSUE

Was the cause of action assignable at law?

FINDING

The Supreme Court considered the two conflicting judgments of *Poulton v The Commonwealth* (1952-1953) 89 CLR 540, in which the High Court held that causes of action in tort or contract are not assignable at law or in equity, and the decision in *Trendex Trading Corporation v Credit Suisse* [1982] AC 679 in which the English House of Lords concluded that a cause of action in tort or contract could be assigned where the assignee has a genuine and substantial, or genuine commercial, interest in the enforcement of that cause of action. The Supreme Court held that the relevant remarks by the High Court in *Poulton* were obiter and a valid assignment of a cause of action for tort or breach of contract could be made where the assignee had a sufficient interest prior to the assignment. Accordingly, the decision of *Trendex* should be followed in principle.

In determining whether the interest was sufficient the Supreme Court considered a number of decisions and appeared to conclude that the existence of a legitimate interest in the party supporting the action is distinct from the benefit which he or she seeks to derive from it and that the interest relied upon must exist prior to the assignment. On the facts that Court found that Rickard Constructions did not have a sufficient interest prior to the agreement to assign causes of action and the assignment must, therefore, fail.

QUOTE

McDougall J at paragraph 59 stated:

...what was required was something beyond a mere personal interest in profiting from the outcome of the proceedings; an interest by the assignee in the assignor or its business affairs or activities which might be protected by the assignment...

IMPACT

This case stands for the proposition that a cause of action in tort or contract can be assigned where there is a genuine and substantial, or genuine commercial, interest in the enforcement of the cause of action.

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