

Brighton Australia Pty Ltd v Multiplex Constructions Pty Ltd [2018] VSCA 246

FACTS

On 05 April 2011, Multiplex Constructions Pty Ltd (**Multiplex**) subcontracted work for the construction of the NAB project to Brighton Australia Pty Ltd (**Brighton**).

On 1 April 2014, Brighton filed a summons in the Technology and Construction List in the Supreme Court of NSW, claiming under s18 of the Australian Consumer Law (ACL), damages and other relief against the Multiplex arising out of the Subcontracts entered into in reliance on misleading representations.

The Court was required to determine whether Brighton's claim was time barred under clause 46 of the subcontract.

ISSUES

Whether an ACL claim is time barred under a time bar clause in the contract.

FINDING

Riordan J considered the purpose of s.18 of the ACL, finding that misleading and deceptive conduct is an unfair practice and under the scheme in the ACL. S.236 of the ACL provides a remedy for the unfair practice.

Riordan J held that the time bar in clause 45 did not bar the Claim as public policy took precedence over the contract.

QUOTE

Riordan J held:

[116] The no exclusion principle is an application of the policy of the common law that where:

- (a) a statute embraces public rather than private rights; and*
- (b) the legislative purpose will not be fulfilled if the Court enforces private contractual arrangements, the Court will refuse to enforce the private contractual arrangements on the grounds of public policy*

IMPACT

This case highlights the Victorian Courts approach in assessing a claim under s.18 of the ACL and the reluctance to allow parties by agreement to exclude the clear policy of the legislation.

Further, the case highlights the importance the court places on public policy in protecting a party when one party attempts to limit statutory protections.