



## **Lumbers v W Cook Builders Pty Ltd (in liquidation) [2008] HCA 27 High Court of Australia 18 June 2008**

### **FACTS:**

Lumbers owned land in South Australia, and engaged W Cook & Sons Pty Ltd (“Sons”) to construct a house on that land. Most of the work required by that oral contract between Sons and Lumbers, was subsequently delegated to W Cook Builders Pty Ltd (“Builders”) as sub-contractors to co-ordinate trades and supervise the construction work., without the knowledge or approval of the Lumbers.

Sons and Lumbers had a dispute, which subsequently resulted in Builders commencing an action in the District Court of South of Australia alleging that Lumbers or alternatively Sons were liable for the outstanding payments due and owing under the contract or alternatively restitution/unjust enrichment.

Builders did not succeed in their claim in the District Court and appealed to the Full Court of the Supreme Court of South Australia who upheld Builder’s appeal, with Vanstone J dissenting. Lumbers then appealed to the High Court.

### **ISSUE:**

Whether Builders was entitled to claim directly against the Lumbers for work done on Lumbers property?

### **FINDING:**

The Court found that there was no basis in which Lumbers were liable to Builders, particularly in restitution and quantum meruit (the latter being the basis on which the Full Court found in favour of Builders) as it could not be established that there had been a conferral or acceptance of a benefit in light of the characterisation of the relationship between the Lumbers, Sons and Builders.

### **QUOTE:**

Gleeson CJ [at 46]

*So far as it appears from the evidence, Builders had, and may still have a viable claim against Sons...it was accepted...that in the ordinary case a building subcontractor does not have a restitutionary claim against a property owner, but must look for payment to the head contractor...*

[at 54] *“Insofar as the Lumbers have been relieved from liability to pay the full agreed price for the work done on their property it appears principally to be the consequence of Builder’s failure to make or pursue a prompt claim against Sons... If that claim had been pursued, it may well have resulted in a claim by Sons against Lumbers...The procedural and evidentiary deficiencies in the case make it impossible to conclude that the conduct of the Lumbers in refusing to pay Builders is unconscionable. If they have been enriched, it is at the expense of Sons. If any party has been enriched at the expense of Builders, it is Sons.”*

### **IMPACT:**

This case demonstrates the traditional position that in normal circumstances a subcontractor will have no claim against a property owner for work done on the property. If the subcontractor wished to have payment secured by the property owner a separate agreement or special relationship would be required.

© Doyle's Construction Lawyers 2008

This publication is intended to be a topical report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle

1800 888 783

[jdoyle@doylesconstructionlawyers.com](mailto:jdoyle@doylesconstructionlawyers.com)

[www.doylesconstructionlawyers.com](http://www.doylesconstructionlawyers.com)