

provisions of s52 of the Trade Practices Act and s 42 of the Fair Trading Act in that the reports represented that there was no other significant asbestos on the site other than that identified. The builder claimed damages.

Brownie J accepted that Amdel's reports contained representations to this general effect. Brownie J found that the Amdel's conduct in publishing the reports was misleading and deceptive in breach of s52 of the Trade

Practices Act and that the builder relied on the reports and suffered loss as a consequence within the meaning of s82 of the Trade Practices Act.

However, Brownie J found that there were no false or misleading representations in relation to the supply or possible supply of goods and services in breach of s53 of the Trade Practices Act.

- John Tyrnil

Carpet - Implied Warranties

Russell & Anor v Garden City Vinyl and Carpet Centre Pty Ltd & Anor, Full Court, Supreme Court of Queensland, 8 August 1990, (1991) ATPR ¶41-152

In a case which could have implications for more significant commercial or retail circumstances, owners sought advice and subsequently ordered carpet of a particular colour to match the exposed brick internal walls of their dwelling house. After the carpet had been laid, the owners found that patches were of a different colour due to a phenomenon known as "pile reversal" or "water marking".

The owners brought an action for damages for breach of warranties pursuant to sections 74B (unsuitable goods), 74D (unmerchantable quality) and 74E (not corresponding with sample) of the Trade Practices Act 1974.

The importer of the New Zealand carpet was deemed to have manufactured the carpet for the purposes of Division 2A of the Trade Practices Act.

The trial judge found that the owners had relied upon the supplier's skill and judgement in the manufacture of the carpet to the precise colouring and pattern chosen. The trial judge found each breach to have been proven. The carpet supplier appealed. To succeed in the appeal, the carpet supplier had to show that the evidence accepted by the trial judge was not capable of amounting to breaches of any of sections 74B, 74D or 74E.

s74B - unsuitable goods

The Full Court found that the owners had made known that they required carpet to match their decor, had relied upon the supplier's skill and judgement, and that the carpet was not suitable for this purpose in breach of s74B due to the phenomenon of shading.

s74D - unmerchantable quality

Section 74D contains a definition of merchantable quality and refers to goods being of merchantable quality within the section "if they are as fit for their intended purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect".

The Full Court found that one purpose for which carpets are commonly bought is to blend the colour into the surroundings.

The Full Court held that the pile reversal or shading was sufficient to justify the trial judge's finding that the carpet was not of merchantable quality in breach of s74D.

The Full Court said that it was unnecessary and undesirable to look to common law definitions of "merchantability" for the purposes of construing sections 66(2) or 74D(1) and (3) of the Trade Practices Act.

s74E - not corresponding to sample

The Full Court found that it was not necessary to make a finding on breach of s74E to determine the appeal.

The Full Court dismissed the carpet supplier's appeal.

- John Tyrnil