

## ACCC v CG Berbatis Holding Pty Ltd (2003) 214 CLR 51

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### Facts

- A group of tenants brought an action against their landlord
- The landlord made a condition of their lease renewal that they had to drop proceedings against them in the tenancy tribunal
- The tenants claimed this was unconscionable

### Issue

- Was the conduct unconscionable?

### Held

- *Gleeson CJ*: Unconscionable conduct is defined in the legal sense, not the colloquial sense. Something may be “unconscionable” in everyday life, but the legal definition is more precise
- It is not unusual for one party to have greater bargaining power than the other in a contract. This alone does not make the conduct unconscionable.
- There must be a "special disadvantage" to make the conduct unconscionable.
- The tenants were at a distinct disadvantage in terms of bargaining power, but there was nothing “special” about it to make it equity’s role to fix it up by calling it legally unconscionable.
- The tenants did have the option to reject the offer if it was not amenable to them.

### Quotes

- "A person is not in a position of relevant disadvantage, constitutional, situational, or otherwise, simply because of inequality of bargaining power. Many, perhaps even most, contracts are made between parties of unequal bargaining power, and good conscience does not require parties to contractual negotiations to forfeit their advantages, or neglect their own interests." [64]

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