

Demagogue Pty Ltd v Ramensky (1992) 110 ALR 608

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Facts

- Mr and Mrs Ramensky entered into a contract with Demagogue Pty Ltd ("**Demagogue**") to purchase land at Noosa Heads in Queensland. Demagogue intended to construct a multi-level residential home unit building and then subdivide the land.
- The Ramenskys contracted to purchase the Lot No 5 for \$405,000.
- The contract did not disclose that the only vehicular access to the land was from Edgar Bennet Avenue and that Demagogue were negotiating with the Land Administration Commission for a grant to permit them to construct a driveway over public land to provide access.
- The draft shown to the Ramensky's contained a plan with a driveway; nothing indicated the driveway was not within the boundaries of the property or otherwise.
- During negotiations, the Ramenskys visited the site with Demagogue's agent, Mr Miller, and enquired about access. It was represented that the developer would build a driveway to the road. A plan of the development was shown to the Ramensky's showing a driveway from the road.
- After becoming aware that the site was subject to a Road Licence the respondents wrote to appellant rescinding their contract. They complained that the appellant had contravened s 52 by failing to disclose the details of the road access. The appellants denied any contravention and threatened action for specific performance and damages. The respondents sought orders that the contract was void and a declaration that there had been a contravention of s 52. The appellant cross-claimed seeking specific performance.
- The trial judge accepted that the Ramensky's would not have entered into the contract if they had been aware about the issues relating to access.

Issues

- Was the failure to disclose that there would be no vehicular access misleading or deceptive?

Held

- The High Court held that the need for the road licence was unusual. In all the circumstances was something that ought to have been disclosed to the Ramenskys during the negotiations for purchase.

Quotes

"Silence is to be assessed as a circumstance like any other. To say this is certainly not to impose any general duty of disclosure; the question is simply whether, having regard to all the relevant circumstances, there has been conduct that is misleading or deceptive or that is likely to mislead or

deceive. To speak of "mere silence" or of a duty of disclosure can divert attention from that primary question. Although "mere silence" is a convenient way of describing some fact situations, there is in truth no such thing as "mere silence" because the significance of silence always falls to be considered in the context in which it occurs. That context may or may not include facts giving rise to a reasonable expectation, in the circumstances of the case, that if particular matters exist they will be disclosed."

Full Text

The full text is available here: <https://jade.io/j/?a=outline&id=212270>

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