

## **Lumbers v W Cook Builders Pty Ltd (in liq) (2008) 232 CLR 635**

<https://lawcasesummaries.com/knowledge-base/lumbers-v-w-cook-builders-pty-ltd-in-liq-2008-232-clr-635/>

### **Facts**

- Lumbers engaged W Cook & Sons Pty Ltd (**Sons**) to build a house.
- Most of the work was performed by W Cook Builders Pty Ltd (**Builders**), though this was change in operations entity was performed without the Lumbers' knowledge.
- Builders was not a licensed builder, unlike Sons.
- The contract was oral and the Lumbers would pay periodic amounts to Sons on telephone request.
- Builders went into liquidation and the Lumbers were informed by Sons that no further monies were owing to Sons.
- Liquidators claimed \$261,715.00 from Sons and the Lumbers for work done on the house.
- The claims against the Lumbers were based on unjust enrichment.

### **Issue**

- Despite the Lumbers not knowing that Builders was performing the work, rather than Sons, could the liquidators make a claim of unjust enrichment due to Lumbers freely accepting the work performed?

### **Held**

- The High Court considered that the legal relationships between the Lumbers, Sons and Builders were governed by contract law and not by the law of unjust enrichment.
- Gleeson CJ stated that the concept of "free acceptance" of a benefit was inapplicable because the Lumbers never had a chance to reject building work performed by Builders.
- The joint judgment of Gummow, Hayne, Kiefel and Crennan JJ centred on the basis that a successful claim for restitution for services must be based on an express or implied request for the performance of services.

### **Quotes**

"These reasons will demonstrate that the legal relationship between the Sons and the Lumbers cannot be dismissed from consideration, whether on the bases assigned by the majority in the Full Court or otherwise. When proper account is then of the rights and obligations that existed between Sons and the Lumbers under their contract, the analysis made by the majority in the Full Court is shown to be flawed. The Lumbers are not shown to have received a 'benefit' at Builders' 'expense' which they accepted, and which it would be unconscionable for them to retain without payment."

(Gummow, Hayne, Kiefel and Crennan JJ at page 662)

### **Full Text**

The full text is available here: <https://jade.io/summary/mnc/2008/HCA/27>

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