

## Rickard & Wilson & Active Safety Services Pty Ltd v Testel Australia Pty Ltd [2019] SASCFC 16

<https://lawcasesummaries.com/knowledge-base/rickard-wilson-active-safety-services-pty-ltd-v-testel-australia-pty-ltd-2019-sascfc-16/>

### Facts

- Testel Australia Pty Ltd ("**Testel**") was a franchisor of an electrical testing business. T&T Rickard Pty Ltd ("**T&T**") was a franchisee of Testel. Mr Rickard was a former director of T&T. Mr Rickard together with Mr Wilson, set up a competing electrical testing business, Active Safety Services Pty Ltd ("**Active**").
- In April 2011, Active started providing electric testing to one of Testel's customers, Flinders Medical Centre ("**FMC**"). Mr Rickard stopped operating the T&T franchise and purported to terminate its relationship with Testel. Testel did not accept the termination.
- Testel commenced proceedings in the District Court alleging that Mr Rickard breached a restraint covenant and contractual obligations of service. Testel also commenced proceedings against Mr Wilson and Active for tortious interference of contract.
- Testel sought damages, an injunction against Mr Rickard in respect of confidential information, exemplary damages and an account of profits against Mr Wilson and Active.
- The trial judge found in favour of Testel and awarded damages of \$144,812.00 against all the appellants. The damages were awarded for the lost opportunity to gain revenue from Testel's clients due to the wrongful conduct. The Court did not award exemplary damages or an account of profits.
- Rickard, Wilson and Active appealed the decision to the Full Court. Testel cross-appealed the decision not to be awarded exemplary damages or an account of profits.

### Issues

- Was the assessment of damages correct?

### Held

- The Full Court discounted the damages for the loss of opportunity by 15%.
- The Full Court did not agree that exemplary damages should have been awarded. Exemplary damages are only awarded in exceptional circumstances and is discretionary.

- An account of profits will not be awarded in tort, except where exemplary damages are available and it is proper to consider illicit profit when assessing quantum.

## Quotes

"In *Hospitality Group* the majority (Hill and Finkelstein JJ) held that the law in Australia in relation to damages arising out of breach of contract is as laid down in *Robinson v Harman* that '...under presently accepted principles, an injured plaintiff cannot claim a windfall to prevent a wrongdoer profiting from his wrong, except in those cases where exemplary damages are available and it is proper that illicit profits are taken into account in assessing the quantum of the award....'"

(Kelly J at [119])

## Full Text

The full text is available here: <http://classic.austlii.edu.au/au/cases/sa/SASCFC/2019/16.html>

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