

Tabcorp Holdings Ltd v Bowen Investments Pty Ltd (2009) 236 CLR 272

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Facts

- On the morning of 14 July 1997, an agent of Bowen Investments Pty Ltd ("**Bowen**") met with Tabcorp Holdings Ltd ("**Tabcorp**"). Tabcorp rented a building in St Kilda from Bowen.
- The meeting was to discuss the tenant's proposals to alter the foyer of the building, which the landlord had not yet consented to.
- Before Tabcorp had even met with Bowen that day, Tabcorp had already commenced its alteration to the building, removing the wood panelling and jackhammering the floor.
- Bowen sued for breach of contract, claiming the costs of fully restoring the foyer to its previous state, on the basis that damages should place Bowen back to the position they were in, but for the breach of contract.
- Tabcorp argued that damages should be restricted to any diminution of the value of the building as a whole because of the breach of covenant. Because there had been no significant loss to the value of the building, the landlord should only be awarded nominal damages.

Issues

- Was Bowen entitled to the full costs for rectification of the building back to its previous state?

Held

- The High Court confirmed that the "ruling principle" in relation to awarding damages for a breach of contract is that a plaintiff, so far as money can do it, is to be placed in the same situation as it would have been in if the contract had been performed.
- Bowen was entitled to have the foyer rectified back to its original state – including the value of its high-quality materials.
- The words "same situation" does not always mean "as good a financial position".
- The High Court confirmed the decision of *Bellgrove Eldridge* that owners of buildings are entitled to rectification costs rather than just the diminution in value of the building, subject to a test of "necessity" and "reasonableness".

Quotes

"In the present case, the respondent was entitled to have a building erected *upon her land* in accordance with the contract and the plans and specifications which formed part of it, and her damage is the loss which she has sustained by the failure of the appellant to perform his obligation to her. This loss cannot

be measured by comparing the value of the building which has been erected with the value it would have borne if erected in accordance with the contract; her loss can, prima facie, be measured only by ascertaining the amount required to rectify the defects complained of and so give to her the equivalent of a building on her land which is substantially in accordance with the contract."

(The High Court (French CJ, Gummow, Heydon, Crennan and Kiefel JJ) at [15])

Full Text

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2009/8.html?query=>

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