

MISLEADING, DECEPTIVE AND UNCONSCIONABLE CONDUCT: BELLE GIBSON CASE

This matter has attracted considerable media attention but the principles are clearly aimed at consumer protection and were applied by the Court.

[Director of Consumer Affairs Victoria v Gibson \[2017\] FCA 240](#) is the principal hearing and decision in this matter.

[Director of Consumer Affairs v Gibson \(No. 2\) \[2017\] FCA 366](#) deals with the orders arising from the principal decision.

Penalties are yet to be determined by the Federal Court of Australia (“FCA”) on a date to be fixed.

The case was brought by the Director of Consumer Affairs Victoria against Annabelle Natalie Gibson (“Gibson”) and Belle Gibson Pty Ltd (now Inkerman Road Pty Ltd) who had both made representations that Gibson had been diagnosed with brain cancer, was given 4 months to live but had eschewed conventional treatment and claimed to have been cured by an holistic approach to healthy living and wellbeing. In addition Gibson had made representations of applying proceeds from the sale of goods and services to charity. The Court found all of these representations were false.

The Court found that Gibson had engaged in conduct in trade or commerce which was misleading or deceptive or likely to mislead or deceive contrary to section 18 of the Australian Consumer Law (Vic) (“ACL”) having made the following claims in connection with the development, promotion and sale of the “Whole Pantry App” and the “Whole Pantry book” by claiming:-

1. she had been diagnosed with Brain Cancer in 2009;
2. she had been given 6 weeks to 4 months to live; and
3. she had taken and then rejected conventional cancer treatments in favour of embarking on a quest to heal herself naturally.

Inkerman Road Pty Ltd (formerly Belle Gibson Pty Ltd) was also guilty of breaching section 18 of the ACL by making the same representations.

Gibson engaged in conduct in trade or commerce which was misleading or deceptive or likely to mislead or deceive contrary to section 18 of the ACL in that she had represented the following:-

1. a portion of revenue from the sale of the Whole Pantry App would be donated to charities;
2. the donations from the sale of the Whole Pantry App would be made within a reasonable time of receipt when in fact the only donation was made over a year later;
3. a large part of everything that Inkerman Road Pty Ltd earned would be donated to charities. When in fact from earnings of approximately \$420,000, only an amount under \$10,000 had been donated; and
4. the proceeds of the sale of “virtual tickets” to the launch of the Whole Pantry App would be donated to specifically named charities which was not the case with only 1 of the charities receiving \$1,000 over a year later.

Inkerman Road Pty Ltd was also found to have contravened section 18 based on the same representations and events as described in the paragraph above dealing with charitable donations;

Gibson had engaged in unconscionable conduct in trade or commerce in contravention of section 21 of the ACL by force of the representations made about the donations noted above; and

Similarly, Inkerman Road Pty Ltd was found to have contravened section 21 of the ACL by engaging in unconscionable conduct in trade or commerce for the same reasons as noted above.

Points to note:

1. That Gibson was required to make a contribution towards the Director of Consumer Affairs Victoria costs in the sum of \$30,000 payable within 60 days of 7 April 2017.
2. Gibson did not appear and was unrepresented at the Federal Court hearing.
3. The Court held that the circumstances of Gibson’s conduct were so intertwined with Inkerman Road Pty Ltd as she was the sole Director and Shareholder that the contraventions were attributable to each of Gibson and Inkerman Road Pty Ltd.
4. There was substantial material made available particularly from transcripts of television and media interviews that the Court considered very carefully and thoroughly. It will be interesting to understand the penalties when they

are finally determined. One wonders whether the absence of Gibson and any legal representation on her behalf led to greater caution by the Court.

5. The case also highlights the relative complexity that is created when a Federal Act is incorporated by reference into a State Act. The Court made a number of observations in relation to the confusing submissions made by the Director of Consumer Affairs Victoria.

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