

CRUISIN' FOR A BRUISIN'!

CONSUMER'S WIN IN FLOODED EUROPEAN RIVER CRUISE CASE

In the torrential rains and floods in Europe of 2013, many tourists were disappointed. However, in the New South Wales Supreme Court case of [Moore v Scenic Tours Pty Limited \(No.2\) \[2017\] NSWSC 733](#), there was a resounding victory for tourist, Mr Moore.

This was a group representative action (class action) alleging that Scenic Tours Pty Limited ("Scenic") had breached each of the following, in that the services:-

1. be provided with due care and skill;
2. be reasonably fit for the purpose that was made known and acquired by the consumer; and
3. achieve the result the consumer desired and made known.

These are the "guarantee" requirements to be afforded to consumers under the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 Cwth) ("ACL").

Mr Moore and his wife had planned a luxury trip of a lifetime river cruising from Amsterdam to Budapest. They were attracted by and reliant on the advertising of Scenic which presented luxurious and relaxing riverboat cruising.

The Moores were scheduled to embark on the river cruise in June 2013. However, torrential rains caused high water levels, flooding and damage to river locks. This led to the riverboats being unable to cruise under bridges and effectively meant the waterways were non-navigable. The effect being that the Moores travelled around Europe substantially by bus and not riverboats.

In other words, the Moores did not get what they paid for nor what was advertised.

Scenic argued that the flooding was beyond their control and that adverse weather conditions should have been anticipated by the Moores. The Court rejected Scenic's arguments and found in favour of the Moores. Whilst accepting some latitude should

be allowed to Scenic, the Court noted that what was delivered was fundamentally different to that advertised, offered and ultimately purchased by the Moores.

The Court, in effect, considered that if a business is unable to provide the services in substantially the same form as what was advertised and promised, then it has an obligation to notify its customers as soon as possible.

In these circumstances, the business must comply with the ACL by:-

1. offering a refund;
2. offering alternative services; or
3. negotiate a reduced price for the reduced value.

The Court has deferred the consideration of compensation for each class member until next year.

This decision, in our opinion, is a welcome victory for consumers. The Court took into account Scenic's expert knowledge of the European waterways. The Moores, other claimants and their advisors, are, in our view, to be commended for their persistence and the comprehensive evidence adduced.

N.B. The author was subjected to a similar experience with a different operator in 2013 on the French waterways. However, our issues were satisfactorily resolved within 1 month of the "cruise".

Date Published: 29 December 2017

Victor Hamit
Wentworth Lawyers Pty Ltd
Level 40
140 William Street
MELBOURNE VIC 3000

Tel: +61 3 9607 8380
Mobile +61 408 590 706

Email: vhamit@wentworthlawyers.com.au
Website: www.wentworthlawyers.com.au

Disclaimer:

These materials are provided as a general guide on the subject only, not as specific advice on any particular matter or to any particular person. Please seek specific advice on your own particular circumstances as situations and facts vary.

Liability limited by a scheme approved under the Professional Standards Legislation