



HIGH COURT OF AUSTRALIA

Public Information Officer

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AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v C G BERBATIS HOLDINGS PTY LTD & ORS

The High Court of Australia today dismissed an appeal by the ACCC which alleged a shopping centre's insistence on tenants discontinuing litigation if they wanted their lease renewed constituted unconscionable conduct under the Trade Practices Act.

The High Court held, by a 4-1 majority, that the tenant was not under any special disadvantage or disability. Inequality of bargaining power was not in itself a special disadvantage. The problem for the tenants was that they had no option to renew their lease. This was not a relevant form of disability for the purposes of the law relating to unconscionable conduct.

Margaret and James Roberts ran a seafood shop in Farrington Fayre Shopping Centre in the Perth suburb of Leeming from 1989 until the end of 1996 when they sold the business. The Roberts' lease was due to expire in early 1997 and the sale was on the basis that a new lease was granted.

The Roberts had joined other tenants in legal proceedings against the owners for various charges imposed on them under their leases. The shopping centre owners said they would renew the Roberts' lease but only on condition that they abandoned the litigation. The Roberts felt they had no choice but to agree.

In 1998, the ACCC instituted Federal Court proceedings, claiming that the condition that the Roberts withdraw from litigation contravened section 51AA of the Trade Practices Act which prohibits unconscionable conduct by corporations. Justice French held that the owners had breached s 51AA, but his decision was overturned by the Full Court of the Federal Court.

The ACCC appealed to the High Court. The Court dismissed the appeal, holding that taking advantage of a superior bargaining position was not to be confused with unconscientious exploitation of another's inability to protect their own interests. The Court held that the Roberts were not under any relevant disability, nor was the shopping centre's owners' conduct unconscionable.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*