



HIGH COURT OF AUSTRALIA

Public Information Officer

18 June 2008

MATTHEW LUMBERS AND WARWICK LUMBERS v W COOK BUILDERS PTY LTD
(in liquidation)

The owners of an Adelaide house did not owe any money to a company which built the house but which was not the company with which the owners contracted for the work, the High Court of Australia held today.

Matthew Lumbers owned the land and his father Warwick Lumbers had an unregistered lease of the property for life and lived in the house in the suburb of North Haven. The house was large, of unusual design and expensive, costing more than \$1 million to build. In late 1993 the Lumbers entered into an oral agreement with W Cook & Sons (“Sons”) to build the house, completed in May 1995. Warwick Lumbers dealt with long-time employee of the Cook companies David McAdam. The Lumbers chose Sons because of its reputation and because of Mr Lumbers’s confidence in Mr McAdam. The informality of the contract was due in part to this trust. No price was fixed, the contract was never put into writing, and no invoices were ever issued. Rather than progress payments for actual costs incurred, Mr McAdam would periodically phone Mr Lumbers to seek a round sum and Mr Lumbers would send a cheque. Following a corporate reorganisation and without the knowledge of the Lumbers, the work, including engagement of subcontractors and supervision, was performed not by Sons but by an associated company, W Cook Builders (“Builders”). Builders was not a licensed builder. The lump-sum payments to Sons were passed on to Builders. Builders went into liquidation in June 1998. The Lumbers were unaware of Builders until August 1998. In February 1999, Sons director Malcolm Cook wrote to Warwick Lumbers explaining that Builders had taken over building the house following a restructure and advised that nothing was owed by the Lumbers to Sons for the house.

In November 1999, Builders served the Lumbers with a demand for an alleged shortfall of \$181,904 and \$92,887 as a 10 per cent fee for supervising the work, totalling \$274,791. No claim had been made before and the supervision fee only appeared in Builders’ books after the liquidation. Builders also sought \$274,791 from Sons. It commenced action in the South Australian District Court against both the Lumbers and Sons. Builders failed to provide security for Sons’ costs so the action against Sons was stayed. Builders claimed against the Lumbers on the basis that Sons had assigned the contract to Builders (rather than it being a subcontractor) and for restitution/unjust enrichment. Judge Barry Beazley dismissed both claims. The SA Court of Appeal rejected the assignment claim, but upheld the appeal on restitution, holding that an incontrovertible benefit was conferred on the Lumbers at Builders’ expense and it would be unconscionable for them to keep the benefit of the service without paying a reasonable sum for it.

The Lumbers appealed to the High Court which unanimously allowed the appeal and restored Judge Beazley’s judgment. The Court held that the Court of Appeal had not taken sufficient account of the rights and obligations under the contractual relationship between Sons and the Lumbers. The Lumbers were not shown to have unconscionably accepted a benefit at Builders’ expense. They had never asked Builders to do anything in connection with the house. Builders’ remedies lay under its subcontract with Sons.

- *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.*