

Court of Appeal breathes new life into contribution claims

The Victorian Court of Appeal has for now settled the question of whether a defendant who is a concurrent wrongdoer can claim a contribution from others under Part IV of the *Wrongs Act 1958* (Vic) even where that wrongdoer has settled with the Plaintiff.

The recent Victorian Court of Appeal decision in *Godfrey Spowers (Victoria) Pty Ltd v Lincoln Scott Australia Pty Ltd & Ors [2008] VSCA 208* (“*Spowers*”) unanimously rejected Mandie J’s formulation at first instance of the interrelationship between Parts IV and IVAA of the *Wrongs Act 1958* (Vic).

The plaintiffs had brought proceedings against the contractor and architect involved in the construction of an office complex for economic loss as a result of defective work. The architect joined the engineer and others as third parties (“the Third Parties”), arguing that if it was liable to the plaintiffs, then the Third Parties were “concurrent wrongdoers” under Part IVAA. The architect submitted that its liability (if any) was limited to the extent of its responsibility for the plaintiffs’ loss or

damage, and ultimately settled with the plaintiffs. In settling, the key issue of whether the plaintiffs’ claim was an “apportionable claim” involving “concurrent wrongdoers” was not finally determined.

The architect then sought contribution from the Third Parties under Part IV in relation to the settlement sum. The Third Parties argued that the plaintiffs’ claim was an “apportionable claim” and as the architect was a “concurrent wrongdoer”, the settlement sum represented the architect’s proportion of responsibility and could not be made the subject of a contribution claim. At first instance, Mandie J accepted the Third Parties’ submission.

The Court of Appeal did not agree with Mandie J’s determination. It held that the operation of Part IVAA is dependent upon various findings being made by the Court and thus only applies where “judgment” has been made against the defendant. It is for a court to determine whether a claim is “apportionable” and whether a particular person is to be regarded as a “concurrent wrongdoer”. Such matters cannot be the subject of compromise.

Part IVAA cannot be used to thwart a defendant’s claim for contribution under Part IV in relation to a settlement sum. Whether or not the defendant is actually entitled to contribution is another matter.

The decision of the Court of Appeal appropriately upholds the long-standing equitable principle that the parties liable to make good a loss must share the burden. To hold otherwise would be to promote injustice.

This article contains general information and should not be acted upon without specific professional advice based on your own circumstances.



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