



HIGH COURT OF AUSTRALIA

Public Information Officer

5 February 2004

JOHN JAMES MURPHY AND ANNE ELIZABETH GEDZ (AS NEXT FRIEND OF DAPHNE MURPHY) v OVERTON INVESTMENTS PTY LIMITED

The High Court of Australia today ordered the Federal Court to assess what damages may be due to two retirement village residents after it found errors in the way the Full Court of the Federal Court reached its conclusion that the Murphys had not proved loss or damage.

The couple moved into Heritage Retirement Village in Sydney's Padstow Heights in 1992 after being told that the estimated weekly cost of management and maintenance was \$55.71, but it turned out this figure did not cover all outgoings and the true cost was much higher. The Murphys understood the levy could rise but were misled about what was then the true level of outgoings.

The High Court appeal was the latest episode in protracted litigation in both the Federal Court and the New South Wales Supreme Court between Heritage tenants and the owners over the levy. Matters were further complicated by Overton selling the village in 2000 to a person not party to the proceedings. It was not in issue in the appeal that there had been misleading conduct in contravention of the Trade Practices Act (TPA). The question in the appeal was what, if any, relief was then due to the Murphys. They contended the Full Court of the Federal Court was wrong to dismiss their appeal against Justice Arthur Emmett's refusal to award damages.

He and the Full Court held that the Murphys had not paid too much for their lease and Justice Emmett also held there was no evidence the Murphys did not receive value for their levy. The High Court held that it did not necessarily follow that no loss was incurred. Inducement to enter the lease by a misleading statement of estimated outgoings meant they undertook a greater than expected obligation.

The Court held that the Full Court was wrong to conclude that the Murphys had not established that they had suffered or were likely to suffer loss or damage by Overton's conduct in contravention of the TPA. Damages for past and future outgoings would make good the position they would have been in had the misrepresentation not been made. The Court held the Murphys had not shown any difference in value of the lease of the unit. If they had, awarding a further sum would have been inappropriate and unnecessary.

The High Court held that the Murphys suffered a loss when Overton started to charge all the outgoings it was entitled to charge. It held the Full Court was wrong to determine the amount of that loss only by comparing the Murphys' financial position if they had taken other accommodation, rather than determining how much larger was the burden of the extra outgoings added into the levy. The Court unanimously allowed the appeal and remitted the assessment of damages to Justice Emmett for further consideration in accordance with the High Court's reasons.

- *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.*