

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Attala v YWAM Surrey Hills Ltd & Ors [2024] VSC 268

Supreme Court of Victoria, Gobbo ASJ, 24 May 2024

An application for summary judgment about a claim that a property contract be declared void for nondisclosure of a prior allegation of historical sexual abuse occurring on the property.

Key words: Church, Victoria, Home for Boys, Alleged Historical Sexual Abuse, Contract for Sale, Misrepresentation, Non-disclosure, Misleading and Deceptive Conduct

1. Youth with a Mission Melb Inc (YWAM Melbourne) is an unincorporated entity established in 1985. In 2019, YWAM Surrey Hills Ltd (YWAM Surrey Hills) and YWAM Durham Ltd (YWAM Durham) (together the Companies) were registered with the same four directors.
2. YWAM Melbourne owned two adjacent properties that contained historical buildings used as the Home for Boys, which the Sisters of St Joseph established in approximately 1890.
3. In 2020, one property was transferred to YWAM Surrey Hills and the other to YWAM Durham.
4. Each of the properties was then placed on the market, and a contract was entered into by Fr Attala, (Attala) a priest in the Coptic Orthodox Church, for \$27.3 m with a deposit and instalments to be paid. He intended to use the properties to establish a mission centre in connection with the Coptic Orthodox Church, a boarding house, a registered training organisation to train missionaries in connection with the Coptic Orthodox Church, and a kindergarten.
5. The total instalments were not paid, default notices were issued, and the companies terminated the contract.
6. Eleven weeks after the termination of the contract of sale, Attala wrote to the Companies advising that he had become aware of historical allegations of child abuse and degrading treatment of children in the care of the Sisters of St Joseph at the Home for Boys.
7. Attala argued that in circumstances where the Companies and their directors knew about the purpose of the property and knew about, but omitted to disclose, the historical abuse allegations, he was entitled to rescission of the contract of sale and recovery of the deposit paid, plus interest and costs, based on:
 - (a) misrepresentation; and/or
 - (b) failure to disclose a material fact in contravention of s 12(d) of the [Sale of Land Act 1962 \(Vic\)](#) (SLA); and/or

- (c) misleading and deceptive conduct by omission, in contravention of s 18 of the [Australian Consumer Law](#) (ACL). The plaintiff sought orders under ss 236 and 237 of the ACL declaring the contract of sale void, and for damages.

8. The Companies argued that:

- They had no knowledge of the abuse allegations;
- They were not aware of the intended use of the properties;
- They denied making any representations about the properties, failing to disclose a material fact, or engaging in misleading and deceptive conduct by omission.

9. The Companies sought summary judgment, and alternatively orders that significant parts of the Statement of Claim be struck out.

10. The Companies' directors provided evidence to the Court that they had no prior knowledge of the historical sexual abuse claims in relation to the properties. Attala argued that future Court processes such as discovery, subpoenas, and interrogatories would provide evidence to support the allegations.

11. The Court noted that Attala had not requested documents through such processes prior to the hearing and had not gone on oath to address the issues or say what he expected to see that would undermine the sworn and unchallenged position taken by the Companies' directors.

12. The Court noted there was no evidence that the directing minds of the Companies (the directors) had, as at the date of entry into the contract of sale, knowledge of the historical abuse allegations. Further, Attala did not properly plead for this.

13. The Court found that there was no reasonable prospect of success of a false representation as no statement, false or otherwise, was made about the issue.

14. The claim of silence or non-disclosure had no prospect of success as the evidence showed, and there was no evidence of it being otherwise.

15. The Court was (at [131]):

Not satisfied that there is a real question of law or fact that should be decided at trial. In my opinion, the plaintiff's claim is improbable, tenuous and one that is contradicted by all the available evidence. There is nothing that sensibly suggests that the plaintiff's position will be improved by discovery, subpoenas or interrogatories given the nature of the plaintiff's claim and the evidence before me.

16. Summary judgment was given for the Companies.

COMMENT



Representations made before a contract important to one of the parties should be included in the written agreement to avoid misunderstandings.

It is often difficult to provide evidence of oral statements made by agents of the parties to the Court to support the contention that an important and influential representation was made in entering into the contract.

VIEW THE CASE



This case may be viewed at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2024/268.html>

Read more notable cases in [The Australian Nonprofit Sector Legal and Accounting Almanac series](#).

Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

Date of creation: June 2024

Number of case: 2024-83

Disclaimer: The material included in this document is produced by QUT's [Australian Centre for Philanthropy and Nonprofit Studies](#) (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Commons licence: 

[This work is licenced under a Creative Attribution 4.0 International licence \(CC BY 4.0\).](#)

ACPNS acknowledges the funding assistance of Our Community to produce the ACPNS Legal Case Notes Series.



ACPNS SUPPORTING THE SECTOR

QUT's Australian Centre for Philanthropy and Nonprofit Studies is a small centre with BIG impact. Since 2001 it has taken a leading role in nonprofit teaching and research, benefiting the sector here in Australia and beyond.

RESEARCH

COURSES

RESOURCES

EVENTS