



HIGH COURT OF AUSTRALIA

Public Information Officer

11 November 2004

TOLL (FGCT) PTY LTD (formerly FINEMORES GCT PTY LTD) v ALPHAPHARM PTY LTD,
EBOS GROUP LIMITED AND RICHARD THOMSON PTY LTD

In a case relating to a transport contract the High Court of Australia today reaffirmed the principle that a party who has signed a written contract is bound by the terms of the contract, despite the party not taking the trouble to read the document.

Alphapharm supplied customers across Australia during the 1999 flu season with the vaccine Fluvirin which it bought from Ebos, a New Zealand company which was South Pacific distributor for the British-made Fluvirin. Ebos had a sub-distribution agreement with Alphapharm in Australia. Richard Thomson, a medical supplies wholesaler and Ebos's wholly-owned Australian subsidiary, looked after the collection, storage and regulatory approval for Fluvirin sent to Australia. By arrangement with Alphapharm, it undertook to arrange for the vaccine to be stored at Finemores' warehouse in Greenacre in Sydney and to be transported by Finemores on refrigerated road transport to other destinations. Richard Thomson's operations manager signed a written application for credit but failed to read the 15 conditions of contract on the back of the application despite a request to do so printed just above where he signed the form. Conditions included that customers and customers' associates, and not Finemores, bore responsibility for any loss or damage and for taking out insurance. Finemores collected 72,240 doses of Fluvirin from the airport. At the warehouse Alphapharm's business manager Ronald van der Pliujm prepared the goods for delivery to his customers, including inserting temperature monitors. Consignments of 28,160 each for Queensland Health and New South Wales Health were rejected because they had become too cold and could not be used.

In the NSW Supreme Court Alphapharm and Ebos sued Finemores and obtained judgment for \$683,061.86 in damages and interest for Finemore's alleged negligence. Although Alphapharm fell within the contract's definition of "customer's associate" it argued it was not bound by the contract. Alphapharm claimed the conditions on the credit application did not form part of the contract, and it denied that Richard Thomson had authority to act as agent on its behalf. Both these arguments succeeded in the Supreme Court and in the Court of Appeal.

The High Court unanimously allowed the appeal and rejected both of Alphapharm's arguments. It was bound by the conditions on the credit application. Richard Thomson was acting as agent for Alphapharm in contracting for Finemores' services. The Court held that rights and liabilities of parties to a contract are determined objectively, not by the subjective beliefs or understandings of the parties themselves. A signature on a contract carried significance, particularly when it appears below a request to read the document first. There was no question of misrepresentation, duress or mistake vitiating the contract. The contract was binding according to its terms, and the exclusion clauses applied to relieve Finemores of liability.

- *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.*