

Shaddock & Associates Pty Ltd and Another v Parramatta City Council (No 1) (1981) 36 ALR 385; (1981) 150 CLR 225

Chapter 4 (page 188)

Relevant facts

Shaddock & Associates Pty Ltd ('Shaddock') and another company were considering the purchase of a property in Parramatta for the purposes of redevelopment. On 10 May 1971, Shaddock's solicitor contacted the relevant department of the Parramatta City Council ('the Council') by telephone to enquire whether any road widening proposals affected the property. He was advised that there were not.

While subsequently making a request for statutory certificates about various local planning issues with respect to the property, the solicitor also specifically requested information from the Council as to whether there were any road widening proposals affecting the property. Although not required by legislation to advise whether there were any such road widening proposals, it was the Council's practice to do so by endorsing the statutory certificates it provided with a statement in red ink that a road widening or realigning proposal was in existence. The statutory certificates provided by the Council dated 25 May 1973 in relation to the property did not contain any such endorsement. In other words, the Council was silent in response to the written request for information about road widening proposals affecting the property. A local road widening proposal that would affect the property had in fact been approved in principle by the Council in 1971. By May 1973 the details of the road widening proposal were in question but there was no doubt it would be adopted.

On 21 May 1973, Shaddock entered a contract to purchase the property. The purchase was completed on 7 July 1973. The road widening proposal was formally approved by the Council in February 1974. It required the acquisition of more than a third of the property. What remained was unsuitable for Shaddock's proposed redevelopment.

Shaddock sued the Council claiming damages for negligent misstatement in both the verbal and written communications it received from the Council in relation to the property. At first instance, the trial judge held the Council did not owe a duty of care to Shaddock in relation to supplying voluntary answers to the inquiries. On appeal, the New South Wales Court of Appeal also held that there was no relevant duty of care. Shaddock appealed to the High Court.

Legal issue

Did the Council owe a duty of care to Shaddock in relation to the oral and written information it provided in relation to the property? Answering this question required the High Court to identify the relevant test for determining whether a duty existed, and to

decide whether the duty of care could extend to information as well as advice, and whether the duty of care could be owed by public authorities.

Decision

On 28 October 1981, the High Court (Gibbs CJ, Stephen, Mason, Murphy and Aickin JJ) unanimously decided in favour of Shaddock. It held that the Council owed Shaddock a duty of care in relation to the oral and written information it provided in relation to the property.

The Judges delivered separate reasons with the exception of Justice Aickin who agreed with Justice Mason. Nevertheless, the Court unanimously stated that a person owes a duty of care in relation to the provision of advice or information where:

- (1) the person carries on a business or profession; and
- (2) in the course of that business or profession, the person provides advice or information of a kind which requires skill and competence, or in relation to which they profess to possess skill and competence; and
- (3) the person knows or ought to know that the recipient intends to act or rely on it.

The Court also agreed that liability for negligent misstatement was not confined to those who carry on or profess to carry on a profession, business or occupation involving the giving of advice. According to Chief Justice Gibbs (at 391):

[T]here is no valid ground on which to distinguish between information and advice for the purposes of the rule in *Hedley Byrne*. Although the giving of advice must always necessarily require an exercise of skill or judgment, and the giving of information may not necessarily do so, a person giving information may be so placed that others can reasonably rely on his ability carefully to ascertain and impart the information.

Justice Mason (at 404) adopted the statement of then Chief Justice Barwick in *Mutual Life & Citizens' Assurance Co Ltd v Evatt* (1968) 122 CLR 556:

According to the Chief Justice (122 CLR at 572-3), whenever a person gives information or advice to another upon a serious matter in circumstances where the speaker realises, or ought to realise, that he is being trusted to give the best of his information or advice as a basis for action on the part of the other party and it is reasonable in the circumstances for the other party to act on that information or advice, the speaker comes under a duty to exercise reasonable care in the provision of the information or advice he chooses to give ... [L]iability for negligent mis-statement is not confined to those who carry on, or profess to carry on, a profession, business or occupation involving the possession of skill and competence (at 573-4).'

Significance

This decision clarified the test that applied in Australia in determining liability for negligent misstatement. The High Court rejected English authorities that had sought to limit liability for negligent misstatement to cases in which the provider of the statement carried on a profession, business or occupation involving the possession of a skill or competence. The High Court also clearly stated that liability for negligent misstatement can extend to information as well as advice, and to public authorities that provide information or advice.