

IN THE COURT OF APPEAL
OF THE SUPREME COURT OF VICTORIA

No. 1 of 2019

BETWEEN

Thomas Loki (APPELLANT)

and

Christopher Thor (RESPONDENT)

RESPONDENT'S OUTLINE OF SUBMISSIONS

SENIOR COUNSEL	Name of the senior counsel
JUNIOR COUNSEL	Name of the junior counsel
INSTRUCTING SOLICITOR	Name of the instructing solicitor

Summary of Submissions

- 1 Her honour did not err in finding that Mr. Thor and Mr. Loki has formed a valid agreement by offer - acceptance rule.**
- 2 Her honour did not err in finding that the required intention to create legal relations was present.**

1. Her honor did not err in finding Mr. Thor and Mr. Loki has formed a valid agreement by offer - acceptance rule.

1.1 Mr. Thor sent the offer by sending the email at 6 p.m. Thursday 1 March 2019.

1.1.1 The language of the offer is clear and certain.

- *Gibson v Manchester City Council* [1979] 1 WLR 294, 295.
- *Brambles Holdings Ltd v Bathurst City Council* (2001) 53 NSWLR 153, 155.
- *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256, 258.

1.2 Mr. Loki was deemed to have received the offer.

1.2.1 The only email address available to Mr. Thor should be regarded as a designated electronic address.

1.2.2 Mr. Loki should be regarded as received the offer by the time when the offer reached his electronic address.

- Electronic Transactions (Victoria) Act 2000 s 13A (1) and 13A (2)

1.3 Mr. Loki accepted the offer by answering “sure” to Mr. Thor on Sunday.

1.3.1 Mr. Thor has made acceptance from an objective perspective.

- *Smith v Hughes* (1871) LR 6 QB 597, 599.

1.3.2 After the formation of the agreement, the acceptance cannot be revoked.

2. Her honour did not err in finding that the required intention to create legal relations was present.

2.1 Judging from overall circumstances and from objective perspective, Mr. Thor and Mr. Loki had the intention to come into an agreement.

2.1.1 The intention of both parties should be judged from an objective perspective.

- *Air Great Lakes Pty Ltd v KS Easter (Holdings) Pty Ltd* [1985] 2 NSWLR 309, 310.
- *Merritt v Merritt* [1970] 1 WLR 1211, 1213.

2.1.2 Overall circumstances and all relevant situations should be taken into consideration when deciding the intention of the two parties.

- *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95, 97.
- *Pacific Carriers v BNP Paribas* (2004) 218 CLR 451, 454.

2.2 The intention of Mr. Thor and Mr. Loki was to enter into a commercial relationship rather than a mere family agreement.

2.2.1 The status of Mr. Thor and Mr. Loki both as tutoring teachers of Mrs. Potts rendered their intention under current agreement to be to form a commercial relationship rather than a family relationship.

2.2.2 Mr. Thor and Mr. Loki intended to create legal relations in the inception of the arrangement.

- *Roufos v Brewster* (1971) 2 SASR 218, 219.
- *Todd v Nicol* [1957] SASR 72, 74.

AUTHORITIES CITED

A – Cases

Australian Cases:

Gibson v Manchester City Council [1979] 1 WLR 294

Brambles Holdings Ltd v Bathurst City Council (2001) 53 NSWLR 153

Air Great Lakes Pty Ltd v KS Easter (Holdings) Pty Ltd [1985] 2 NSWLR 309

Merritt v Merritt [1970] 1 WLR 1211

Pacific Carriers v BNP Paribas (2004) 218 CLR 451

Roufos v Brewster (1971) 2 SASR 218

Todd v Nicol [1957] SASR 72

United Kingdom Cases:

Smith v Hughes (1871) LR 6 QB 597

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256

B – Legislation

Australian Legislation:

Electronic Transactions (Victoria) Act 2000 s 13A (1) and 13A (2)