

Chapter 3

Common Law Obligations of Good Faith in the Performance and Enforcement of Joint Ventures of a Non-Fiduciary Nature

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[3.1] Introduction

This chapter is devoted to the issue of non-fiduciary common law obligations of good faith, as they may arise in the performance and enforcement of joint ventures. In recent times a rush of commercial contractual claims involving good faith has signified the need for a separate chapter examining this issue. Although most of these decisions have arisen in commercial contexts other than joint ventures, the decisions, nevertheless, warrant careful consideration to the extent that they cast light on the likely contours of the common law good faith obligation as it may apply in the joint venture context.

[3.2] The Legacy of *Renard Constructions (ME) Pty Ltd v Minister for Public Works*¹

It is commonly accepted that the genesis of the implied good faith obligation in Australia was the judgment of Priestley JA of the New South Wales Court of Appeal² in *Renard Constructions (ME) Pty Ltd v Minister for Public Works (Renard)*.³ Until this decision, an implied term of good faith had only received tentative acceptance in Australian jurisprudence other than in a fiduciary context.⁴ The unfortunate doctrinal by-product

1 It is expressly acknowledged that the commentary in [3.2] is consistent with commentary written by the author elsewhere: Bill Dixon, 'Good Faith in Contractual Performance and Enforcement - Australian Doctrinal Hurdles' (2011) 39 *ABLR* 227.

2 Priestley, Meagher and Handley JJA.

3 (1992) 26 *NSWLR* 234.

4 This observation is made in *Burger King Corporation Pty Ltd v Hungry Jack's Pty Ltd* [2001] *NSWCA* 187 at [146].

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