

LAWYER SUCCESSFULLY DEFENDS \$6.5M CLAIM ALLEGING BREACH OF RETAINER

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A plaintiff's claim for damages in excess of \$6.5M against his former solicitors for breach of contract, negligence and misleading and deceptive conduct in the provision of legal advice was dismissed.

IN ISSUE

- Whether, in giving legal advice, the defendant breached its retainer with the plaintiff, was negligent and engaged in misleading or deceptive conduct.

THE BACKGROUND

In 2008, Page Seager Lawyers (the defendant) were engaged by Fingal Pastoral Pty Ltd (the plaintiff) to provide advice about proposed forestry rights agreements with Gunns Plantations Pty Ltd (Gunns) and Wesley Vale Engineering Pty Ltd (Wesley Vale) to establish forestry plantations on the plaintiff's property. The agreements gave Gunns and Wesley Vale the right to establish, maintain and harvest a eucalypt plantation for 15 years in return for payment of an annual fee. In January 2009 the agreements were executed, and in March 2013 Gunns and Wesley Vale went into liquidation. The agreements were subsequently terminated. The plaintiff claimed damages in excess of \$6.5M from the defendant alleging breach of contract, negligence and misleading and deceptive conduct, arguing that, had it not been for the defendant's advice, it would not have entered into the agreements.

THE DECISION AT TRIAL

His Honour found that it was an implied term of the defendant's retainer that they would exercise reasonable care and skill in the provision of legal services, and that their duty to the plaintiff was to exercise the degree of care and skill expected of a member of the legal profession having the expertise required of the retainer.

After considering the correspondence between the parties, His Honour found that the retainer was limited to the review of, and advice as to, the terms of the draft agreements and that the defendant did not assume a duty, independent of the retainer, to give advice about the legal and commercial risks of the proposed transaction. Further, His Honour found no change to the retainer as circumstances evolved, and the plaintiff asked questions concerning the potential liquidation of Gunns or Wesley Vale.

His Honour went on to find that it was not a breach for the defendant not to advise on the legal and commercial risks of the proposed transaction, or on the risks associated with the liquidation of the companies.

The plaintiff submitted that the defendant incorrectly advised that the agreements did not need to be amended to include an ownership clause should the businesses go into liquidation. His Honour, however, disagreed finding that a reasonably skilful and careful legal practitioner would not have advised against entry into the agreements without such a clause. His Honour noted that a solicitor does not normally warrant the correctness of advice and, provided reasonable care has been exercised, they are not liable for an error of judgement.

His Honour found that there was nothing the defendant did or did not say to influence the plaintiff to enter into the agreements, and therefore the defendant did not mislead or deceive the plaintiff in any material way. The plaintiff was aware of the risk it was taking.

His Honour was not satisfied that causation was established in contract, tort or under the *Fair Trading Act 1990* (Tas).

IMPLICATIONS FOR YOU

This case serves as a reminder for all professionals of the importance that the terms of retainers are clear, and that the advice and/or service they provide falls within the scope of a retainer.

[Fingal Pastoral Pty Ltd v Page Seager Lawyers \[2019\] TASSC 48](#)

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