

LESSONS IN LITIGATION

TAKE CARE WHEN SIGNING AS AN AGENT

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A recent matter successfully resolved by Clifford Gouldson shows how litigation can be avoided if you are always clear when you are acting as someone else's agent.

Our client was engaged to project manage the construction of a motel in North Queensland.

As is usually the case, a Management Agreement was signed by the developer and our client which contained an indemnity clause.

This clause provided that the Developer would indemnify our client against any and all claims other than those caused by our client's own negligence.

This is a common clause and most people involved in this sort of arrangement happily rely on it as evidence that whenever they enter into a contract related to the project they are doing so as an agent for the Developer, not personally.

As the project progressed our client liaised, on behalf of the Developer, with various suppliers, met them at the site, facilitated the exchange of plans and specification, quotations and approvals/purchase orders. Again, there is nothing particularly unusual about this – it is common practice for project managers to perform this task.

This included liaising with the supplier of cabinetry for the motel.

After agreeing on what cabinetry was required, our client signed the contract for the supply of the cabinetry on behalf of the Developer, or so he believed. Unfortunately our client failed to ensure that the contract clearly indicated that he was signing as agent on behalf of the developer.

When the cabinetry was delivered a dispute arose over the quality of the product and the Developer refused to make payment.

The cabinetry supplier immediately made a claim in the amount of \$73,000 against both the Developer and our client.

Because our client had signed the contract with the supplier without expressly acknowledging that he was doing so as an agent for the developer the supplier was perfectly within his rights to include our client in the claim.

We assisted our client in defending the claim and sought contribution or indemnity from the Developer for our costs, based on the indemnity clause in the management agreement.

The matter went to mediation where we argued strongly that all indications, barring the contract lacking an "as agent" proviso, were that our client only ever acted on behalf of the Developer.

Ultimately the dispute settled on terms very favourable to our client. He recovered \$7,500 towards his legal costs and was not required to pay any money to the cabinet maker. The Developer paid

\$38,000 to the cabinet maker in full and final settlement of the claim and provided a release to our client against making any subsequent claim against him.

The end result in this case was a good one for our client, although they did still incur some legal costs that were not covered by the other parties.

However, the critical lesson here is that had our client simply included a phrase like “as agent, for and on behalf of the Developer” when the contract was signed, the cabinet maker would likely have never included them in the claim at all, saving our client a lot of stress, time and cost.

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