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Settlement of Solicitor/Client Costs Disputes: Deed held to be Void Conditional Costs Agreement

In *Ellimark Pty Ltd v Calvo* [2015] NSWSC 1240 (31 August 2015), Bergin CJ in Eq has held that a Deed which provided for the transfer of shares in a company to the solicitor in consideration for the provision of legal services amounted to a conditional costs agreement within the meaning of s 323 of the LPA. The transfer of the shares to the solicitor was contingent upon the clients first recovering the shares in the proceedings. The Deed failed to inform the clients that they had a right to seek independent legal advice before entering into the Deed and it did not contain a cooling off period of not less than five clear business days. Bergin CJ accordingly held the Deed was void pursuant to s 327(1) of the LPA ordered that the Deed be set aside.

As the above indicates, practitioners must be extremely careful when reaching a compromise with clients in respect of costs and/or outstanding costs. For a useful discussion as to matters to be considered and a consideration of circumstances in which an agreement providing for how costs would be paid entered into to compromise a dispute as to costs was a “costs agreement” and whether that agreement was void as compromising or barring the right to costs assessment see *Amirbeaggi & 2 ors v Business in Focus (Australia) Pty Ltd & 5 Ors* [2008] NSWSC 421.

If you have any costs queries please contact Peta Solomon

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