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THE IMPORTANCE OF UNDERSTANDING CONTRACTS

A contract is a legally binding agreement between two or more parties. The importance of understanding contracts and when you're entering into one cannot be understated. In today's economic climate it has become even more important to understand what your rights and responsibilities are when you create contractual obligations.

To form a contract the following elements generally need to be present:-

- There needs to be an offer and acceptance.
- There needs to be what is called consideration. This means that something needs to be exchanged or some value that is gained.
- The parties need to intend to enter into a legally binding agreement.

There is, of course, the overriding principle that those who enter into a contract must have the capacity to do so.

While some contracts such as guarantees or the sale of a house need to be in writing, not all do. Irrespective of this, it is always prudent to have the agreement put in writing so each party knows what their obligations are. In the case of *QLD Holdings – 1 Pty Ltd v Collingwood Holdings Pty Ltd [2009] NSWSC 732* the agreement between the parties needed to be put in

writing in time in order to create the obligation. In that matter Mr Valentino was the sole shareholder and director of QLD Holdings – 1 Pty Ltd. Mr Edward Guerinoni was the sole shareholder and director of Collingwood Holdings Pty Ltd. They incorporated Elliston Co-Operative Pty Ltd in which each of their companies held one share. By July 2006 Guerinoni and Valentino had a falling out and they communicated through their accountants. From July 2006 Guerinoni made several proposals in relation to separating the interests of Elliston Co-Operative Pty Ltd. On 22 September 2006 the following proposal was put forward:-

"Our client will acquire your client's interest in the project for the sum of \$450,000.00. The offer is of course subject to satisfactory contracts being exchanged and agreement being reached on the inventory as well as mutual releases from any guarantees and obligations."

On 12 October 2006 there was a response to the above offer:-

"We advise that our client has instructed us to accept your offer and therein confirms that he is prepared to buy your client's interest for \$450,000.00. Please prepare the contract of sale and the other relevant documentation in order to finalise the above transaction. We confirm that this offer is subject to our acceptance of the contents of your contract of sale and other relevant documents."



It was held in *QLD Holdings* that the agreement in that instance was not binding. The conclusion was reached for several alternative reasons that the agreement was intended to be subject to a formal contract created at some later point in time. The reason for this was because the agreement did not fully cover the parties agreed terms and or because the agreement was void for uncertainty.

This case demonstrates that in the majority of cases, an agreement needs to be put in writing. It is important that the terms of the agreement are understood and the effects are known.

If you are considering entering into a contract, Rankin Nathan can review the contract and advise you of your rights and obligations. We can also advise you of the consequences of signing the contract before you even sign it. If you feel you may be in breach of a contract or that the other party may be in breach we can provide advice to you in relation to this. So if you're in the market for buying goods, buying a house, engaging a builder to do work or borrowing money please bring your contract to Rankin Nathan first so we can advise you of your rights.



Rankin Nathan Lawyers
1300 727 813

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