

Short Minutes Transcript: Is Your Client's Case Hopeless?

In 2003 the Court of Appeal considered the liability of a solicitor and barrister for legal proceedings that were bound to fail as the client had no cause of action.

The client retained the solicitor and barrister to sue a travel agent and a tour operator when she was injured on a package tour holiday. Her injury occurred when she was involved in a fight with a fellow passenger on the tour.

At the trial it became apparent that the case was hopeless in that no cause of action existed against either defendant. The client was ordered to pay the costs of both defendants.

The client brought an action in the District Court against the solicitor and barrister in negligence for failing to advise her that she had no cause of action. At first instance the judge held in favour of the legal advisors because the legal advice was found to be adequate. However, the client successfully appealed the decision.

Justice Cripps made the legal position clear, saying that failing to advise the client "that she did not have a cause of action in either tort or contract against any of the defendants amounted to a failure to exercise care and skill in the provision of legal advice."

The court distinguished between a case which is arguable and a case where a reasonably competent lawyer could not have given any advice other than that the client's case was hopeless.

The court also confirmed that a solicitor does not avoid an obligation to give correct advice even if the advice is contrary to the advice of their barrister.

Of course, the commencement of most actions will require the solicitor to certify that the claim or the defence has reasonable prospects of success, but this duty is ongoing, requiring solicitors to constantly consider whether the client's case continues to have reasonable prospects of succeeding.

A link to the case can be found below:

[*Kolavo v Pitsikas \(t/as Comino and Pitsikas\) & Anor \[2003\] NSWCA 59*](#)

I'm Kerrie Lalich