

# Could the secret to your success as a solicitor lie in asking the right questions?

As solicitors, we may think our role is to have all the answers. However, the first step to having the right answers is to ask the right questions.

The primary reason solicitors are retained is for legal advice to solve a problem, or to achieve a particular outcome or goal. To be valued as a trusted adviser to clients, solicitors need to take the time to ask the right questions so that they can be sure they understand clients' objectives.

Only with the benefit of this knowledge can solicitors appreciate the implications of particular courses of action and be comfortable that clients are fully informed before giving instructions. To proceed otherwise is fraught with risk and can expose solicitors to a professional negligence claim.

The recent case of *ACN 115 918 959 Pty Ltd v Hoeyes Lawyers Pty Ltd and Ors* [2021] VSC 79 is a reminder of a solicitors' duty of care when providing advice to clients and, in particular, the importance of discussing the potential implications of different courses of action. This case also serves as a reminder that solicitors need to bring their own forensic judgement to a matter and not rely solely on the advice of barristers.

In this case, the plaintiff builder sued both its former solicitor and barristers for negligence in respect of advice to terminate an agreement. The plaintiff contended that the advice was negligent because it resulted in the loss of its proprietary interest in acquiring a number of plots



of land at a discounted price and that it had not been warned of the consequences of termination. When it became clear to the plaintiff that its interest in the land had been lost, the plaintiff stated that it did not want to terminate. When the solicitor queried why the plaintiff had not stated this earlier, the plaintiff responded that it had followed the barristers' advice.

The court found both senior counsel and the solicitor negligent. Blue AJ held that the exercise of reasonable care by the solicitor required him to do more than adopt senior counsel's advice to terminate the contracts. His Honour said the exercise of reasonable care required the solicitor to question the basis on which senior counsel reached this conclusion and stressed the importance of discussing the advantages and disadvantages of termination with senior counsel and the plaintiff to ensure the plaintiff made an informed decision.

His Honour went on to say that the evidence did not suggest that the client understood the consequences of termination and the solicitor ought to have explained specifically and directly to the plaintiff that, if the agreement was terminated, they would lose the ability to acquire the land.

**Asking the right questions to understand your clients' objectives and ensure that clients are fully informed of the consequences of a particular course of action, will not only reduce the risk of a professional negligence claim against your law practice but is a valuable investment in building client relationships.**

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