

jackson smith

SOLICITORS

When two experienced business people meet and verbally “make a deal” how can they be sure it will be binding on them both? >>

In May 2004 a meeting occurred in a Sydney restaurant between two experienced businessmen where the sale of a restaurant business was negotiated.

The price was agreed, agreement was also made on vacant possession for the purpose of a stock take, and it was agreed that contact would be made with the landlord in relation to a transfer of the lease. Deposit monies were paid in accordance with the agreement.

Before the sale was completed the purchaser had a change of mind and withdrew the offer.

Within a short time an action by the vendor against the purchaser was heard in court and a final judgment was handed down on 2 July 2004.

The judge held that the parties had not reached a final agreement because the “agreement” was subject to a document being prepared. He decided from the evidence that at the meeting there was reference to a written agreement being prepared by solicitors in respect of the deal.

The bottom line... If two parties to an agreement want to reach a final verbal agreement they must agree on all of the terms of their bargain and intend to be immediately bound to the terms of the agreement.

They still may intend to have a document prepared, but if the “handshake” verbal agreement is to be binding it must be intended that the document would not be different to the terms that they have agreed and are performing.

Note however that in some circumstances the law requires a written document – for example when land is being transferred.

I hope that this information is of some interest and benefit to you, and your clients.

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