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A SHARE PURCHASE RESULTS IN ROUGH JUSTICE

Background

In January 2005, Timothy Weeks bought a 50% stake in a company called Healthy Water Pty Ltd from Douglas Campbell, who retained the remaining 50% share. Weeks paid \$850,000 for his interest. Within 4 months, the parties had fallen out, the business was in trouble and it went into liquidation. Mr Weeks brought legal proceedings in the Supreme Court of NSW to recover his money.

The Sale Agreement

The Sale of Shares Agreement contained all of the usual provisions to protect Mr Weeks, including warranties about financial information. In the negotiations preceding the sale agreement, Mr Campbell had provided financial information about the business to Mr Weeks. Because Campbell was unwilling or unable to verify the financial estimates, Weeks requested and was given a warranty that all information provided was accurate.

The Courts

Mr Weeks was successful in the single judge Supreme Court hearing. However, Campbell appealed to the three judge Appeal Court. Weeks was successful once again (although on different grounds). Not satisfied, Campbell took the case to the five judge High Court. Here, the judges reversed the two previous courts and ruled in favour of Campbell!

Remarkably the High Court decided that because the three judge Appeal Court has not adequately considered Weeks'

claim in respect of his contractual warranties and the damages flowing from the breach of those warranties, the case should be remitted back for further litigation in the three judge Appeal Court - this despite the High Court recognising that the costs of litigation were already much larger than the amount of damages at stake. Whether the failure of the Appeal Court to consider the warranties was a result of poor legal advice or a failure by the judges themselves to give proper consideration to the matter is unclear. In any event it would be cold comfort for Mr Weeks.

A Bad Result

To add insult to injury, when the company was placed into liquidation, Campbell bought the business back from the liquidators for less than \$200,000 (only a few months earlier a half share had been sold to Weeks for \$850,000).

How to Resolve Disputes

If ever there was a lesson that litigation should be avoided at all costs, this was it. A total of nine judges were involved. Two courts went one way, and one court the other. Mr Weeks would have been better off in a casino.

One should seriously consider a provision in legal agreements to exclude recourse to the courts to the maximum extent possible. Instead, wherever reasonably available, the parties should rely on a binding decision of a properly qualified expert. Surely the predictability of the outcome would be no better or worse for either party, but certainly the result would be much quicker and the costs much less.

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