

Quick cautionary tales for a better practice

Episode 80

No Paper Trail, Big Risk

Clear documentation isn't just good practice, it's essential for managing risk. In *Gomes v Sun Legal*, a solicitor's failure to confirm the scope of their retainer and keep proper records led to a costly claim.

Mr Gomes, director of the company S&P Gomes, engaged Sun Legal to act on the purchase of a combined hotel motel. The vendor sought a purchase price on a "walk in, walk out" basis.

Mr Gomes proceeded with the purchase but after settlement he discovered numerous defects and pest issues.

The company, S&P Gomes, then commenced proceedings against Sun Legal claiming that if they had been properly advised on building and pest reports, key contract terms, and other details, they would not have proceeded with the purchase.

The solicitor maintained that he was engaged by Mr Gomes personally, not the company, and only to complete the transaction, not to provide advice on the agreement. However, the Court disagreed, finding that the solicitor did not send any email or letter to Mr Gomes confirming his instructions or the nature and scope of his retainer. Further, despite having several conversations with Mr Gomes and asserting that extensive advice was provided during the course of the transaction, that advice was only ever given orally and never confirmed in writing. No file notes were taken.

The judge was critical of the solicitors' actions stating that "It defies belief that, if he had the conversations, he would not have made some record of them. He admits that it was his usual practice to do so. Yet he chose not to do so with the person he describes as his most difficult client".

Written records are important. The retainer should be documented in writing, clearly setting out who the client is, the scope of work to be undertaken, and any limitations on the services provided. Clear and contemporaneous file notes including details of oral communications should be taken and kept on the file.

Not only is it prudent practice, but without clear and contemporaneous records, it can be hard to defend yourself should a claim arise down the track.

I'm Glenda Carry

S&P Gomes Pty Ltd ta Cohuna Hotel Motel v Sundar ta Sun Legal [2025] NSWSC 24