

PUT IT IN WRITING!

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How many times have you heard a lawyer say this? How important is it to reduce an oral agreement to a written document?

The parties in *Vero Insurance Ltd v Tran* [2008] NSWSC 363 recently found out.

Proceedings were brought in the District Court in relation to a building contract. A builder sued owners of a residential property for the balance due under a residential building contract. The owners cross-claimed against the builder (and its directors) for alleged defective building work. They also brought a claim against Vero for its alleged breaches of its indemnities to the owners under the *Home Building Act 1989*.

The proceedings were the subject of a mediation. The mediation lasted all day. No written agreement was entered into for the settlement of the District Court proceedings. But Vero claimed that the parties had entered into a firm and binding oral settlement agreement. Was that claim right?

The evidence before the court was that the parties had detailed discussions and negotiations. The terms discussed were complex and detailed since they involved, in precise detail, works to be done to the dwelling.

At about 5 pm the mediator gathered the parties together. He made an announcement—according to Vero congratulating the parties on reaching settlement; according to other parties simply recording what had been agreed so far. The parties then left the mediation.

The next day, the mediator forwarded the parties a typed copy of the 'Interim Terms of Settlement'. His covering letter indicated that 'The matters which were not the subject of express agreement at the conclusion of

the mediation are underlined or separately noted.'

Also relevant were the terms of the Mediation Agreement which provided that 'The Mediation may be terminated ... upon execution of a Settlement Agreement...'

Perhaps not surprisingly, the court found that no settlement of the proceedings had been reached. Essentially, this was a result of the commonsense and commercially sound meaning to be put upon the language of the Mediation Agreement. It was held, effectively that it was the intention of the parties that any resolution of the proceedings could only be achieved by execution of a written agreement.

Most mediation agreements have similar terms, and take place in similar circumstances. The lesson is clear—no matter how detailed, and no matter how late, it is vital that everything you believe you have bargained for be recorded in a written and executed document. Otherwise you are likely to be disappointed.

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