

Conveyancing: 'Getting it right first time'

A salutary decision by our Supreme Court regarding a conveyancing transaction which unfortunately headed off the rails was published on 6 April 2022.

In the case of Santangelo¹, Justice Slattery awarded to the vendor not only an Order that the property sale and purchase agreement be completed by the purchaser but also that the costs of the proceedings – which involved four barristers (including two 'Silks') and two sets of solicitors - were to be paid by the unsuccessful, defending purchaser: a very substantial, additional cost which the purchaser in entering the conveyancing transaction would never have budgeted for.

Amongst the issues at dispute between the parties was the nature and timing of documentation for the existing tenancies of the property to be handed over.

Had the 'tenancies' subject being more adequately covered by a special condition placed into the contract by the purchaser's representative when the contract was entered into, there would undoubtedly have been less room for the costly dispute to have developed in the first place.

This would likely have resulted in any disagreement between the parties being resolved and settled before ending up in Court.

A couple of 'take-away' points from the case-

- There is much less chance of a misunderstanding or dispute when one takes the trouble to have tailored special conditions covering any special circumstances of the deal – that is to 'get it in black & white' rather than relying on earlier discussions between the parties or assumptions made during those; and
- The importance of communications between solicitor and client at the time that a contract is formed: Effective client instructions will, if sufficient care is taken, allow protective clauses to be negotiated and inserted into an agreement before the client commits to the transaction (also known as the 'exchange of contracts').

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¹ <https://www.caselaw.nsw.gov.au/decision/17ffc5d056bdbbc6cb820625>