DUTIES TO CLIENTS - CONFLICTS OF INTEREST

Case: *Law Society of NSW v Harvey*

Facts: Some of Harvey's clients lent money to three companies of which Harvey was a director and shareholder. Harvey channelled the money into his own ventures involving speculation in land, but failed to provide adequate security.

He failed to make proper disclosure to his clients of his own interests, nor of the risks associated with the proposed investments. He also failed to advise his clients to obtain independent legal advice before entering into the transactions, and in some cases, invested the money in unauthorised investments.

Details of the speculations were kept from the clients, who were mostly inexperienced in matters of investment and business.

The clients brought a claim against Harvey, who ultimately was struck off the roll.

Held:

Harvey used his position as a lawyer to channel his clients' money for use as risk capital in speculative land ventures, and recklessly disregarded the need to protect his client's property by failing to provide adequate securities.

Where there is a conflict between the interests of the lawyer and the client, as there was here, it is the duty of the lawyer to make complete disclosure of their interests.

As a result of this behaviour, Harvey is unfit to continue working as a lawyer.

Case: *O'Reilly v Law Society of NSW*

Facts: O'Reilly, a solicitor, and his wife were directors and sole beneficial owners of shares in Home Mortgage Corporation (HMC), a home mortgage lending company. HMC rarely used its own money to make loans. It obtained funds from other money lenders and concurrently assigned HMC's rights as mortgagee to the actual lender.

HMC operated from offices adjacent to O'Reilly's law practice.

Held:

The Court of Appeal said that the physical proximity of the offices, together with the fact O'Reilly sometimes referred clients to his own company, often acting for more than one party in the transaction, created a significant risk that conflicts of interest and duty would occur.

Mahoney JA -

"A solicitor shall not, in any way whatever, in respect of the subject of any transactions in the relations between him and his client, make gain to himself at the expense of his client, beyond the amount of the just and fair professional remuneration to which he is entitled."

In this respect, O'Reilly did not tell his clients that they could receive a better lending rate elsewhere. It was at this point that he began to fall foul of the law.

Kirby P -

"Searching out and providing finance, particularly for land title conveyancing, has long been a function of solicitors in our community. That function can be beneficial to clients, especially those inexperienced in financial matters who look to the solicitor for guidance. Access to finance in such circumstances may be in the best interests of the client. But where the solicitor has an interest in the finance provided, however indirect, there is an inevitable risk of the reality, or appearance, of a conflict of interest and duty. That risk can only be avoided by the most scrupulous conduct on the part of the solicitor. Depending upon any special terms of the retainer, such conduct will oblige him or her to do at least the following:

a) disclose the interest fully and candidly to the client, preferably F confirmed in writing in case of later disputes or inquiries;
b) to advise and facilitate the provision of independent advice where that is appropriate and to do so in more than a perfunctory way; and
c) to advise on, and facilitate access to, alternative sources of funds, particularly where these may be to the client's advantage.

By these stringent standards, I am not convinced that the appellant met his obligations to all of his clients."

The risk of a conflict of interest and duty can only be avoided by the most scrupulous conduct on the part of the solicitor. Such conduct will oblige the solicitor to do at least the following: disclose the lawyer's interest fully and candidly to the client, preferably in writing; advise and facilitate the provision of independent advice where that is appropriate; and advise on and facilitate access to alternative sources of funds, particularly where these may be to the client's advantage.

Case: *Longstaff v Birtles*

Facts: Solicitors acted in negotiations for the purchasers of a hotel. The negotiations were unsuccessful, and the retainer was terminated.

Later, the solicitors, who were partners in a hotel business venture, invited the former clients to buy into the partnership. However, they failed to advise the former clients to get independent legal advice beforehand.

The deal proved financially disastrous and the former clients sued the solicitors for breach of fiduciary duty.

Held:

Mummery LJ upheld the claim and said the source of the fiduciary duty was not only in the retainer, but in all the circumstances creating the relationship of trust and confidence.

The fiduciary breach resulted from the solicitors continuing to deal with the claimants without insisting that they obtain independent advice. The decision was influenced by the fact the transaction was closely related to the subject matter of the original retainer, coupled with the trust that the claimants placed in the solicitor's business judgment.

Arguably, if the solicitor had gone into business with the former clients in a separate and independent dealing, and the dealing upended, the outcome would have been different.

Case: *Bosgard v Bosgard*

Facts: An ex-husband and ex-wife were engaged in a family law, parenting and property dispute. There was an intimate de-factor relationship going on between the ex-husband and his solicitor. In addition, the solicitor was the sole director, sole secretary and sole shareholder of a company that had allegedly lent funds to the husband (i.e. her client).

The ex-wife objected to the solicitor acting for the husband on the following grounds:

a) The solicitor commenced an intimate relationship with the husband after he retained her to act for him in his family law proceedings;
b) There was a possibility that the company (of which the solicitor was a director) could be joined as a party to the proceedings and called as a witness in the proceedings;
c) The solicitor was not in a position to act independently of her relationship with the husband.

Held:

The court used its inherent jurisdiction to restrain the solicitor from acting for the husband. It said:

"It is not difficult to see that the solicitor's duty to the court was overborne by her duty to her client due to their relationship, which impacted on her objectivity, independence and calm rationality in relation to the issues arising in these proceedings."

The Court found that the *"financial circumstances of the cohabitation between the solicitor and her client will be relevant to consider in the primary property proceedings, as with the nature of the loan, the circumstances of its making, the application of the funds and whether or not repayment is likely to be demanded."*

The Court also found that the solicitor may be required to give material evidence at a later stage of the proceedings for at least two issues, being the relationship issue and the creditor issue.

In respect of the paramount duty owed to the court, the Court said: *'It is not hard to see how that priority might well be reversed, and the solicitor place the love she has for her partner above the duty that she owes to the Court.'*

The solicitor is to be removed from acting for the client.

NOTE: If the solicitor for the ex-wife had found out about the ex-husband's de-facto relationship with their solicitor, the ex-wife's solicitor would not be duty bound to tell the court. However, it would not be unreasonable for the solicitor to have a conversation with their ex-wife to inform them of the circumstances. In fact, if the solicitor for the ex-wife failed to have a conversation with their client, they may be open to accusations of negligence with their own client; that is, they are withholding a piece of information from their client which would be relevant to their matter.

Case: *Legal Practitioners Board v Morel*

Facts: Ms Morel had personal relationships with 3 different prisoners -

1. *McFarlane* (McF) - who she stopped acting for when it became personal (and they got married);
2. *Page* (P) - who she entered into a personal relationship with and continued to act for him until calls and visits were banned by the DCS;
3. *Smith* (S) - who she entered into a long-term personal relationship with, including after he had absconded from the pre-release centre.

The circumstances of Morel's relationship with her clients went as follows:

Morel was admitted to practice in 1987. She worked as a criminal lawyer for the Aboriginal Legal Rights Movement. During the course of her work, she visited a number of prisons.

In 1989, she met McF when she visited his prison, after which they commenced a personal relationship. Once she realised she had developed a personal relationship with him, she ceased acting for him, but continued the personal relationship, marrying him will he was still imprisoned. However, McF was due to be in prison for a further 7 years, and the relationship eventually dissipated, ending in 1996.

In 1997 Morel began a personal and professional relationship with a P. She kept this relationship a secret, failing to divulge it to any individual or legal authority. She chose not to disclose it because she thought her credibility with the Department of Correctional Services, who she had lots of dealings with, would be undermined if she had "fallen for a prisoner a second time." Morel kept working for P as his lawyer, while continuing the relationship.

On one occasion she falsely stated to the Department for Correctional Services (DCS) that she needed to speak with the prisoner about an urgent legal matter, when her real purpose was a personal visit. On another occasion, during a phone call which Morel knew (but the prisoner didn't know) was monitored, P admitted to a serious assault on another prisoner.

In early 1998, DCS banned Morel from visiting P in either a personal or professional capacity because she was using her legal relationship with him to further her personal relationship with him. However, she continued to represent P. In March 1999, DCS decided to report Morel's personal relationship with P to the Legal Practitioner's Conduct Board. Because of this report, Morel ceased acting for P in 2000. P went on to represent himself.

Morel went on to start a relationship with another prisoner, S, in 1999. Following the conclusion of the disciplinary hearing before the Legal Practitioners Conduct Board, and while the Board's decision was reserved, Morel agreed to accommodate S at her residence under the conditions of his home detention order, and later under a condition of his parole. Because Morel had never acted for Smith she considered there was nothing wrong with this arrangement.

In 2003, S escaped from custody and sought refuge in Morel's house. Morel tried to get S to surrender, ultimately reporting him to the police. She said she had come to realise there were dangers in having relationships with her clients, and that she created dependencies in P and S, who were both vulnerable prisoners. She acknowledged she had lost her objectivity, compromised her representation of her clients, and submitted herself to ongoing therapy.

Held:

In the end, the Court decided to strike Morel off the Roll. In doing so, the court said:

"Morel's conduct involved a ***substantial and recurrent failure*** to meet the standard of conduct observed by competent legal practitioners of good repute.

Ms Morel abused the privilege that practitioners have to visit prisoners for purposes of giving legal advice. She used the pretence of the need for legal advice to further her personal relationship with a prisoner. The trust and confidence that the public has in the profession has been put in jeopardy. Ms Morel's dishonest and selfish conduct was the result of a lack of awareness of her basic professional duties and obligations.

Her subsequent conduct with Mr Smith, although not the subject of any charge, demonstrates her ongoing naivety and continuing lack of awareness of professional obligations.

What makes her unfit to practise is an **apparent and continuing failure to discern the barrier between professional and personal relationships,** to the detriment of her clients and her integrity as a legal practitioner."

Case: *R v Szabo*

Facts: Defence Counsel had not disclosed to his client his previous intimate relationship with the prosecutor.

Held: *"This is not a case of actual injustice. The Crown case was strong, the defence was robust, and the trial was regularly conducted. Further, there is no suggestion of any actual, improper disclosure of material by defence counsel to the prosecutor."*

But it was a perceived miscarriage of justice, so the convictions were set aside, and a retrial ordered.

Case: *LSC v Bradshaw*

Facts: A barrister, Bradshaw, helped his wife who was plaintiff in an action. However, he stated that in this situation he was not acting as a barrister, but just helping his wife.

Issue:

- *Was he acting as a barrister or only as a "husband"?*

Held:

Bradshaw was charged with -

a) Lack of competence and diligence;
b) Communicating directly with opponent's client;
c) Acting in a matter in which had a direct financial interest; and
d) Coming into conflict by being a likely witness in the matter.

The Tribunal held that it was irrelevant Bradshaw was not charging a fee. He was obviously acting as a barrister for his wife in the circumstances. Further, he failed to recognise the conflict between his own financial interest and his duty to the court.

Bradshaw is publicly reprimanded and required to undergo 10 hours of professional development on ethics and practice management.

The Court held that the test of conflict in these situations is the ***perception of miscarriage of justice test***: *Whether a fair minded, reasonably informed member of the public would conclude that the proper administration of justice requires the practitioner should be prevented from acting*.

Case: *Yunghanns v Elfic*

Facts: Corrs Chambers Westgarth had acted for both Yunghanns and Elfic in relation to transactions which led to litigation. Yunghanns applied to the court to restrain Corrs from continuing to act for Elfic in the litigation.

Held (Gillard J):

In restraining Corrs -

It is not in the interests of the administration of justice that a firm which has acted for a client in a series of transactions over many years, and thereby had an intimate knowledge of the client's affairs, should then act in proceedings in which some of the events in issue occurred when the firm was acting for both groups of parties.

It brings the procession into disrepute that a firm is prepared to act in these circumstances, and offends what right minded people would think is the obligation of solicitors in the circumstances.

Case: *LSC v Faigen*

Facts: Kerilli Pty Ltd was an incorporated legal practice which practised under the firm name Diakou Faigen (DF). The company employed solicitors Diakou and Faigen, who were both partners in DF and directors of Kerilli.

Money for Living (MFL) was a company located on the floor above DF's office MFL preyed on the elderly by purchasing their property for below market value. Under this scheme, MFL would buy the property for an amount upfront, and pay a monthly payment to the elderly vendor so that they would stay in the property as a tenant.

MFL approached DF to act on behalf of vendors under the scheme. DF prepared documentation relating to the sale of their properties and leases back to the vendors. DF also encouraged the elderly vendors to draw up Wills and powers of attorney, which DF handled.

Thus, DF became enmeshed in the scheme; it was clear that MFL was a client of DF. The vendors were not informed of the relationship between DF and MFL, and they were not referred for independent legal advice concerning their proposed participation in the scheme.

MFL went into liquidation in 2005, causing great distress to the elderly vendors remaining in MFL's properties as their monthly payments ceased.

DF claimed they were not engaged by MFL, but it was clear from the evidence that he was. Thus, after the scheme collapsed, DF was deemed to be acting for both MFL and the vendor-clients (i.e. both the party preying on the victims of the scheme and the victims themselves).

DF had engaged two barristers to act on behalf of the victims of the scheme, only withdrawing after the barristers informed DF (a) of the concurrent client conflict and (b) the possible cause of action the vendor-clients had against DF.

Held:

The case eventually came before the Legal Services Commissioner (LSC), who argued -

a) *In relation to Diakou* - "it was Mr Diakou's youth, lack of experience, and the lure of a client bringing in work which blinded his judgment. The depth of his naivety was such that he believed he was acting for the victims of the scheme. It seems extraordinary that it is nonetheless the case that Mr Diakou was blissfully unaware that there was a conflict of interest."
b) *In relation to Faigen* - "Faigen knew of the conflict the entire time, but still proceeded to act on it."

Kerilli was fined. However, Faigen left the partnership and Diakou became wholly liable for Kerilli's wrongdoing. Faigen later pleaded guilty to misconduct, but neither he nor Diakou were struck off the Roll. Diakou in particular was spared greater sanction because the LSC believed he was being genuinely naïve.

Case: *Spincode v Look Software*

Facts: This case concerned a concurrent client conflict and an application to restrain a solicitor from acting further in relation to one of the parties.

The law firm McPherson & Kelly (M&K) acted for Look Software. The lawyer from M&K, Mr Kirton, had helped set up Look Software as a joint venture of Spincode, owned by Moore, and G-Wiz, owned by Rogers. Spincode (Mr Moore) and G-Wiz (Mr Rogers) were each allotted 50 shares in Spincode, becoming the company's CEOs and directors.

A year later, Mr Dee, an employee of Look Software, was appointed as a director of Spincode and allotted 50 shares in the company. In the same year, the Kay Brothers began working for Spincode.

The following year, the Kay Brothers entered into discussion with the 3 directors of Spincode whereby shares would be allotted to the Brothers. In the end, shares would be divided 30% in favour of Spincode, 30% in favour of G-Wiz, 25% in favour of Dee and 15% in favour of the Kay Brothers (7.5% each). However, the shares were never issued to the Brothers due to a dispute pertaining to remuneration.

Eventually, all parties consulted M&K seeking to resolve the dispute. M&K advised and set up a mediation, but this was unsuccessful.

A week later, Dee received a fax from M&K which stated they acted for Spincode/Moore and also made allegations against Dee. Dee contacted M&K directly, requesting clarification. The lawyer they spoke to denied sending the fax, claiming it was sent by another partner who had been acting independently for Moore since 1994.

G-Wiz/Rogers, Dee and the Kay Brothers, on behalf of Look Software, were peeved by this. They demanded M&K come clean on who they actually acted for, before eventually seeking and retaining alternative representation to look after their own interests. They also argued that M&K should no longer be acting for Spincode/Moore because they had always acted for Look Software in general.

M&K initially asserted that they were not acting for Look Software at all, and that at the time of the dispute they were only acting for Moore, eventhough Look Software was paying their legal bills.

The remaining persons involved with Look Software proceeded to lodge an application for an injunction to prevent M&K from continuing to act for Spincode/Moore. Warren J granted the injunction restraining M&K from acting or continuing to act in the proceedings for Spincode. Spincode appealed.

Held:

Vic Court of Appeal dismissed the appeal and made it very clear that the McPherson & Kelly lawyer was Look Software's lawyer and should have behaved that way. It was not within M&K's rights to change who they were acting for.

This is a clear case where confidential information relevant to Look Software, and the matters in dispute intending litigation, were both in the hands of M&K. Spincode had not shown that the confidential information was not at risk of disclosure, and the respondents have shown there was a real risk the confidential information would be misused.

The Court has 2 reasons to intervene in this case: not only was there a misuse of confidential information, but lawyers have an ongoing obligation of loyalty not to act in the interests of one of the preferred clients in relation to the same matter when they have acted in the past for both. Solicitors cannot just change sides, choosing one client over another. A solicitor's duty of loyalty isn't extinguished when the retainer ends. Allowing solicitors to change sides would also run counter to public policy, and bring in to disrepute the sanctity of the lawyer-client relationship. Allowing lawyers to 'flip' would place a stain of disloyalty on the lawyer-client relationship.

Ultimately, M&K's conduct is offensive to common notions of fairness and justice. To a fair and reasonable member of the public, swapping clients would bring the perception and administration of justice into disrepute.

Case: *Australian Liquor Marketers v Tasmans Liquor Traders*

Facts: Tasmans Liquor operated in Cheltenham, Victoria. In August 2001, it was served with a claim by Venacorp for repayment of a $40,000 debt owing. The claim was issued out of the Queensland District Court.

Tasmans Liquor instructs a Mr Heshan of Hardy's Lawyers to act on their behalf, who in turn instructed Deacons Lawyers to act as Tasman's local solicitors in Queensland.

In fact, prior to the issuance of the Queensland proceedings, Tasmans had retained other solicitors in both Victoria and Queensland in relation to its dispute with Venacorp. As such, Tasmans requested their other Queensland solicitors forward their files to Deacons in Queensland. Hardy's Lawyers then sent Deacons instructions on the matter, and Deacons billed Hardy's accordingly.

In October 2001, Deacons' Melbourne office wrote to Hardy's notifying them that they, Deacons, had been retained by Australian Liquor Marketers (ALM) in relation to sale of business negotiations between ALM and Tasmans which had broken down. A statement of claim was filed by ALM in 2002 alleging repudiation of a contract by Tasmans, and a concern was raised with Hardy's that Deacons appeared to be acting for ALM against Tasmans at the same time that they were acting for Tasmans in its dispute with Venacorp (i.e. was acting both for and against Tasmans).

Deacons' argued the following:

1. Acting for Tasmans in their dispute Venacorp, and against Tasmans in acting for ALM, are two entirely separate matters. There has been no exchange of confidential information between Deacons' Queensland Melbourne offices, and there is no reason why there would be; and
2. Further, Deacons had limited their retainer with ALM to prevent disclosure of Tasmans' confidential information to the Queensland office; and
3. Told Tasmans that if necessary they would cease to act for them in the Queensland matter.

Nevertheless, Tasmans Liquor applied for an order that Deacons Lawyers be restrained from acting as the solicitors for Australian Liquor.

Held:

Tasmans Liquor's application must be rejected. The two proceedings Deacons were involved in were unrelated. Further, not only were the nature of the disputes wholly different, but there was also no possibility that Tasmans confidential information would cross over from the Melbourne office to the Queensland office. Deacons assurances as to safeguards of confidential information are thereby accepted.

Justice Habersberger said as follows:

"*There is no real and sensible misuse of any confidential information. Further, we believe that right-minded members of the public would not think that it was inappropriate to allow Deacons to continue to act.*"

Case: *Prince Jefri Bolkiah v KPMG (UK Case)*

Facts: In 1996, KPMG were auditing an investment agency belonging to the government of Brunei. The Price of Brunei, Prince Jefri Bolkiah, was the chairman of the investment agency.

At the time of the audit, Prince Jefri was amid major litigation pertaining to his investment affairs. He retained the services of KPMG for accounting and litigation support. KPMG performed various tasks for Prince Jefri, including tasks that would ordinarily be undertaken by a solicitor. Thus, KPMG were given access to highly confidential material regarding the Prince's assets, including the amounts and locations thereof.

In March 1998, the litigation settled, and the Prince was removed from the investment agency. 3 months later, in June 1998, the Brunei Government began an investigation into the investment agency, appointing KPMG to investigate where particular assets were being held, assets which had been suggested were used by the Prince for his own benefit.

KPMG took steps to ensure that those who had been acting on behalf of the Prince weren't on the team investigating the agency in this matter. Thus, they attempted to create an information barrier within their forensic department.

Unhappy about these developments, the Prince commenced an action for breach of confidentiality against KPMG, seeking an injunction to restrain them from acting further in the matter.

At first instance**,** an injunction was granted. The judge held **that although KPMG had an honest intention not to disclose confidential information, the information barrier was inadequate to deal with inadvertent disclosure**. KPMG appealed the decision.

Held:

<u>Court of Appeal</u>

The Court of Appeal dismissed the injunction, holding that there was no evidence that the Prince would suffer any real prejudice. Awarding an injunction in the first place set an unrealistic standard for protection of confidential information. The Prince appealed again, this time to the House of Lords.

<u>House of Lords</u>

Where it is established that defendants are in possession of confidential information belonging to a former client, and the information might be relevant for a current client in a current matter, the court should intervene to prevent the information from being disclosed *unless they are satisfied that there is no real risk of disclosure.*

Regarding information barriers -

The Court believes information barriers can eliminate risk of inadvertent disclosure of confidential information. However, the Court must be satisfied that effective measures are taken such that no disclosures will occur. To be effective, a measure must be an established part of the firm; not an ad hoc on arrangement on particular occasions. Here, there was an ad hoc arrangement set up to deal with a particular matter, which related only to members of a single working group.

Barriers need to be far more robust to be effective. The Court may look for evidence of the following in determining whether an effective information barrier has been set up -

a) **physical separation of various departments in order to isolate them, including separate dining arrangements and other details** - so that members of the two conflicting teams are prevented from discussing the matters over meal times;
b) **recurring educational programs within the firm that emphasise the importance of not improperly or inadvertently divulging confidential information** - ensuring everybody is up to speed;
c) **strict and carefully defined procedures for crossing walls and records when it does occur**;
d) **monitoring of effectiveness of the wall by compliance officers**; and
e) **disciplinary sanctions imposed on staff who breach the procedures**.

The above must be evident within the entire firm as a matter of protocol, not set up for particular matters.

Here, it was established that KPMG had the information. Therefore, KPMG had the burden of proving that there was no real risk that information might unwittingly or inadvertently be disclosed. They have not done this; there is no evidence KPMG holds these established procedures. They were very ad hoc, and therefore ineffective. The injunction is granted.

Case: *World Medical v Phillips Ormonde & Fitzpatrick (VIC - SC)*

Held:

The approach taken by the House of Lords in *Bolkiah v KPMG* regarding information barriers was endorsed by the Supreme Court of Victoria in this case. The Supreme Court laid out a 5-stage test for determining if an injunction **should** be granted where a successive conflict exists:

1. *Is the solicitor in possession of confidential information provided by the former client, and the client has not consented to disclosure of the information?*
2. *Is the information relevant to the new matter in which the interests of the other client are averse to the former client's interests?*

If the answer to the first 2 questions is 'yes' -

3. *Is there a real and not fanciful or theoretical risk that there will be disclosure of the confidential information?*

If yes -

4. *The evidentiary burden, which is heavy, rests upon the provider of the service to establish that there is no risk of disclosure. This may be established by the existence of a strong information barrier.*

However, information barriers must be extremely robust. It is extremely rare that barriers are strong enough. Assuming information barriers are not strong enough -

5. *Should a permanent injunction be granted?*

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Case: *APT v Optus*

Facts: Clayton Utz acted for a former client in a claim against Optus. By doing so, Clayton Utz had obtained confidential information in relation to the plaintiff in the present case.

When Optus sought to retain Clayton Utz as its lawyer in the current matter against APT, the firm's file was locked in a cupboard, the key to which was held by only one employee, and undertakings were given by relevant lawyers within Clayton Utz not to use any of the information previously used in Optus' defence. This was accepted by the Court, and Clayton Utz were not originally restrained from acting.

However. Further down the line, a lawyer from Clayton Utz had a partner sign a document when his managing partner was unavailable. The partner asked to conduct the signing was supposed to be inaccessible to the lawyer, *behind* an Information Barrier.

Clayton Utz claimed this was an insignificant infraction. Clayton Utz blamed the lapse on a lack of adequate organisation, education and communication inside the firm, as to the existence of the Barrier. An additional (and ultimately fatal) difficulty for the firm was that it had earlier promised the same judge that it would set up an effective Information Barrier for this particular case of successive conflict.

APT applied to have them removed from Optus' solicitors, arguing it was too difficult for Clayton Utz to abide by their own Information Barrier.

Held:

The court issued the injunction. The judgment conveyed the judge's dismay at the attitude of the firm to the prevention of successive conflict.

Bergin J described the Information Barrier as 'paper thin', lacking in robustness. It purportedly existed on the same floor of a *Clayton Utz* office and which was insufficient to stop a partner who had signed a 'no contact' undertaking from inadvertently signing a consent order in the screened action. Her Honour dissolved the barrier and restrained Clayton Utz from further representation.