

update

10 October 2008

Tax update: Is there a tax aspect to that new file?

A recent VCAT case highlights the need for lawyers and accountants to consider all “angles” when advising a client on a transaction – unless they want to be successfully sued for negligence! In Snopkowski v Jones [2008] VCAT 1943, the issue was if a conveyancing lawyer had an obligation to advise on CGT even though not directly asked to.

Mr Snopkowski decided to transfer an interest in his property to his wife. He asked his lawyer what taxes and charges would generally apply. The lawyer appears to have said that it would be a low-cost and simple transfer. Following the advice the transfer was registered in the Titles Office.

Mr Snopkowski’s accountant who prepared his tax return said that he had made a capital gain and would be required to pay CGT of \$25,427.70. He said that if he had known of the CGT liability, he would not have done the transfer. The lawyer said that there was no specific discussion concerning CGT, that she was not a taxation practitioner nor held herself out to be one, and could not give advice on CGT.

In finding for Mr Snopkowski, VCAT said that CGT is not new, and a lawyer of 20 years experience should have known that CGT could apply, or that she needed to refer her client to a tax expert. At the very least, the lawyer should have asked her client if he had received any CGT advice and if not, have done so. VCAT said that the lawyer had breached the standard of care required of a legal practitioner in this case and ordered her to pay her client’s \$25,000 tax bill.

The moral of the story is not to presume that you can narrowly advise your client on an issue just because you haven’t been asked to. When it comes to even the simplest of transactions, income tax or GST will be a cost to be considered. The law will presume you know everything about tax and advise your client accordingly. If you don’t know what the ramifications are, you need to at least ask a tax expert to protect yourself.

For more information

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