



"Agreement in principle" - is it binding?

Date : March 17, 2018

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When you're negotiating the terms of a contract, settlement or payment arrangement, you might hear the term "agreement in principle". The obvious questions are:

1. What does it mean?
2. If you agree "in principle" to a person's offer, or that person agrees "in principle" to your offer, can the agreement be enforced?

These are questions that are considered in numerous cases and various situations. The Courts have historically considered such cases in the context of different categories of agreement based on the decision in *Masters v. Cameron*. Recently the Supreme Court of New South Wales looked at these questions again in the matter of [P J Leahy & Ors v A R Hill & Anor \[2018\] NSWSC 6](#). In this matter, Mr Leahy (and his related parties) commenced proceedings against Mr and Mrs Hill to recover an amount he claimed was due for repairs to a shed and arrears under a licence agreement.

The Facts

The parties attempted to resolve their dispute and attended a mediation. Unable to reach an agreement at the mediation, the solicitors continued negotiations the following day. Mr Leahy's solicitor ultimately formalised one of the offers in the form of a *Calderbank* offer.

In a telephone call to Mr Leahy's solicitor, Mr and Mrs Hill's solicitor said that his "clients agree to [Mr Leahy's] offer *in principle*...". Mr Leahy's solicitor confirmed this later in an email, stating that his "...clients have given *in principle* agreement to [Mr Leahy's] offer...". Mr and Mrs Hill ultimately decided not to proceed with Mr Leahy's *Calderbank* offer and made a counter-offer.

Mr Leahy claimed that Mr and Mrs Hill had already accepted his *Calderbank* offer and were bound to comply with the terms of his offer. Mr and Mrs Hill took the view that their agreement to Mr Leahy's offer was qualified by the words *in principle*, which meant that they had reached some agreement but that it was not final.

Mr Leahy subsequently applied to the Court seeking that the "in principle agreement" was valid and enforceable.

The Outcome

In dismissing Mr Leahy's application, the Court concluded that:

- the deliberate use of the term *in principle* suggests that Mr and Mrs Hill did not intend to enter into a binding agreement;
- if Mr and Mrs Hall had intended to be bound immediately by their acceptance *in principle*, they would have said so.

So what does this all mean? If you reach an "agreement in principle", you might have generally agreed to terms but probably not to a final and binding agreement (unless specifically stated otherwise). The end result is that an "agreement in principle" may not be enforceable. The better way is to obtain legal advice and document any agreement carefully, expressly setting out whether the agreement is intended to be binding, and if so, at what point, and on what terms.

If you would like more information or advice in relation to insolvency, restructuring or debt recovery practice and procedure, contact Andrew Behman at abehman@matthewsfolbigg.com.au, or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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