



Paper, who needs paper?

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In today's society of evolving technology, contracts between parties can be whipped up in no time. However, what happens when an agreement between two parties is not formalised in writing and a debt is claimed by one party to another. Can the creditor still enforce the payment of the debt? If so, on what terms?

In the recent decision of *Saravinovski v Duncombe* [2017] NSWSC 1521, the Supreme Court was asked to overturn the decision of a local court magistrate who granted Mr Duncombe, a private investigator, judgment in respect of a debt for unpaid surveillance fees owed to him by Mr Saravinovski. While there was no formal contract signed, the parties had had many discussions regarding particular aspects of the services Mr Duncombe was to provide and which he subsequently delivered.

In particular, the Court was asked to find that it was a term of the contract that the costs would be capped at \$10,000 (and not \$20,000 as the creditor alleged) and that the results of the surveillance would be completed by 6 March 2015. The creditor argued there was no deadline on providing his results, although it was understood that his work was required to obtain evidence for a hearing commencing on 16 March 2015.

The Supreme Court considered the conduct of the parties after the meeting at which the terms of the agreement had been reached and agreed with the Magistrate that it would be inconsistent with that conduct for there to have been a deadline of 6 March 2015 for the works to be completed.

The Court also found there was no reason to disagree with the Magistrate's preference for the evidence of the creditor about the higher limit on the estimated fees.

While best practice is to have all agreements in writing and signed by both parties, this case demonstrates that in the absence of a formal written contract, the 'course of dealings' that occur between parties can in some cases be construed to give rise to an enforceable contract. However having regard to the costs of a hearing in the Local Court and an appeal to the Supreme Court, the total debt of \$15,489.65 is probably the least of the debtor's worries.

Read the *Saravinovski v Duncombe* judgment [here](#).

If you would like more information or advice in relation to insolvency, restructuring or debt recovery law, contact Renee Smith on (02) 9806 7485 or renees@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:



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