# The Judgment: Is it the end of the Debt Recovery Process?

**Date :** December 13, 2023

In *DW Fox Tucker Pty Ltd v Morgan* [2023] SASCA 11, the Supreme Court of South Australia Court of Appeal allowed an appeal by DW Fox Tucker Pty Ltd ('the Creditor') regarding the decision that there was no costs agreement between the Creditor and the director ('Mr Morgan') of TS Morgan Developments Pty Ltd ('the Company').

## Background

The Creditor obtained judgment against Mr Morgan in relation to unpaid legal fees incurred whilst the Creditor was acting for the Company. The Company had gone into voluntary administration in March 2017. However, the judgment was set aside in February 2020. Mr Morgan then sought a declaration that there was no costs agreement between him and the Creditor, and the Court ruled in his favour. However, the Creditor challenged this decision to the Court of Appeal.

## The Decision

It was held by the Court of Appeal that a reasonable person in Mr Morgan's position (having regard to the retainer letter and taking into account the relationship of the parties) should have appreciated that it was intended to bind both the Company and Mr Morgan in his personal capacity.

## The Importance

There are a few key takeaways from this case, some of which are set out below:

- A creditor often will see a judgment as an end to the proceedings, as it generally should be. However, in circumstances where the quantum of the claim is quite high, it may be worth considering whether there is in fact a basis for an appeal.
- It is also important for a creditor to carefully consider the drafting of their agreements (i.e. retainers, credit applications, contracts etc) to avoid any ambiguity.
- However, by the same token, also seek advice in circumstances where there is ambiguity within the drafted agreement (or in relation to it), that could cause a dispute between the relevant parties.
- It is important to remember that whilst a written form of agreement is important, the Court does not solely look to the relevant documents to inform its decision. The Court will also take into consideration any relevant background information, including the conduct of the parties to inform its decision.

### Contact Us

If you would like more information or advice in relation to insolvency, restructuring or debt recovery law, contact a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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