

## Contracts - Unsigned - Enforceability

*Morihovitis v Beaumont*, unreported, Supreme Court of Victoria, 8990 of 1990, Nathan J, 9 June, 1993.

Sometimes, where there is an unsigned contract and a claim arises, the party defending the claim will attempt to rely on the fact that the contract has not been signed. Denying liability on this basis appears an attractive proposition. However, parties to an unsigned contract should not assume that they automatically escape liability.

In *Morihovitis v Beaumont*, the Supreme Court of Victoria recently considered whether a builder could recover damages for breach of an unsigned contract.

### The facts

Beaumont (the client) agreed to purchase a house to be constructed by Morihovitis, who carried on business as a domestic home builder. The builder provided a written contract for signature. The client did not sign the contract.

Because he believed the client to be trustworthy, the builder proceeded to build the house, relying on the client's verbal promise to buy the house.

During construction the client asked for a number of variations to the design, which increased the price considerably and decreased the general marketability of the house. The revised plans, as requested by the client, were lodged with the Council.

The client was unable to make progress payments in accordance with the terms of the proposed contract, but reassured the builder that finance would be forthcoming. As it turned out, the client was not able to obtain finance before the house was completed.

In the meantime, the builder had continued to finance the contract that he had with the vendor of the land as well as the cost of construction, including the variations requested by the client. All this incurred extra interest.

When a Certificate of Occupancy was issued for the house, the client declined to complete the purchase and attempted to terminate the relationship.

The builder was not able to sell the property for 18 months, and sued the client for his losses.

### The court's decision

The court found that:

1. By his conduct (i.e., his promise to enter into a written contract), the client had led the builder to assume that a legal relationship existed between them.
2. In attempting to terminate the relationship with the builder, the client had acted unconscionably.
3. The builder would suffer if the client were permitted to withdraw from his obligations under the proposed contract.

The court held that the client could not deny the existence of the contract and should be held to that contract.

The court also made some pertinent comments about the builder's records:

"I found him (the builder) to be a man of truth, and as is somewhat uncommon for a builder, a man whose records supported his narrative. This would be one of the few cases where a builder was able to produce his bank documents, his taxation returns and his story, and the three were more or less aligned. Such a startling piece of consistency with a small time entrepreneur is not common in this Court."

### Conclusion

Contracts sometimes remain unsigned because they contain unacceptable terms. Nevertheless, a court can subsequently find that the unsigned contract is binding, and this can have serious consequences for the party who has not signed the contract.

To minimise the risk of subsequently being held to an unsigned contract you should:

1. Give timely notice to the other parties to the proposed contract that you do not intend to be bound by the proposed contract; and
2. Not behave in a manner that could reasonably be interpreted and relied upon to show that you consider yourself bound by the unsigned contract.

Finally, the importance of maintaining accurate records by all participants in the industry cannot be over-stressed. Quite often, the party that will succeed in a dispute will be the party with the most reliable records.

- **Robert Denaro,**  
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