

Short Minutes Transcript: Power of Attorney - Reliable or Fallible

Solicitors regularly receive instructions in various transactions from attorneys appointed under powers of attorney that appear to be valid documents. When should a solicitor make further enquiries to establish the validity or otherwise of those instructions?

This question was addressed by the NSW Supreme Court in *Yaktine and Perpetual Trustees*.

The solicitor was instructed by the son of Mr and Mrs Yaktine to act on his purchase of a property. The son also instructed the solicitor to act on a large mortgage of his parent's property with a significant amount to be paid towards the purchase of his property. The son produced a forged power of attorney and told the solicitor that his parents were overseas but they agreed with the transaction.

Mortgage documents were signed by the son under the power of attorney and witnessed by the solicitor. The solicitor also witnessed 2 stat decs which the son signed on behalf of his parents. Of course this cannot be done.

The parents first learnt of the transaction when they received a letter of congratulations from the lender following settlement.

The court found that the solicitor was guilty of making a false and misleading representation in submitting the mortgage documentation to the lender's solicitor. Chief Justice Young said:

"Especially for solicitors, red lights should flash when certain factors exhibit themselves, one red light flashes when one can see that the donor of the power of attorney is to receive no benefit at all from the transaction yet the donee is to receive a considerable benefit..."

A prudent solicitor when he or she sees the red light; makes enquiries...

A prudent solicitor is extremely careful about documents to which he or she puts his or her signature and professional reputation and takes precautions against misleading anyone else."

Tragically for the solicitor His Honour also upheld Lawcover's exclusion clause on the basis of the solicitor's dishonesty and the solicitor was made liable to indemnify the lender without recourse to his insurance policy.

A link to the case can be found below.

[Yaktine v Perpetual Trustees Victoria Ltd \[2004\] NSWSC 1078](#)

I'm Malcolm Heath