



# Recent Decision

## MONEY TRANSACTIONS? Assume NOTHING!

The recent Trial Decision in the District Court at Brisbane of Berghan v. Berghan [2017] QDC 47 shows the importance of all dealings even with family members being clearly documented and properly worded.

In this case, mother and father were suing a son in relation to a series of loans that were made to the Defendant over a period of time.

In each case, it was said that the Defendant would *“pay them back and more and look after them in old age”*.

Therefore, in a series of transactions which occurred over a period of time (some 11 or 12 in total) monies were paid by the Plaintiffs to the Defendant but care of his business account.

As the Plaintiffs became more elderly, they had realised that their wisdom had been wrong in giving so much money to their son and so they requested it to be repaid.

It was suggested in cross-examination to the Defendant that his position that the monies were gifts and were not to be repaid was simply nonsensical.

Whilst this was something commented on by His Honour in giving Judgment, His Honour considered that the main problem with the Plaintiffs' case was that they failed to prove that there was any intention of the parties to create legal relations.

So although he accepted the evidence of the Plaintiffs that it was the intention of the parties that the monies advanced by them to the Defendant were to be repaid by him, he did not accept that the Plaintiffs had proved that there was an intention to create legally binding contracts with the Defendant.

Accordingly, this somewhat surprising outcome in this case was that the Plaintiffs' claim was dismissed (i.e. they were unsuccessful).

We think that the case highlights more than ever that transactions, especially when monies are being “loaned”, should be documented in order to prevent problems occurring in the future no matter what relationship the parties may have with each other.

**(07) 3883 3700**

**(07) 3883 3711 (Fax)**

**[www.rblawyers.com.au](http://www.rblawyers.com.au)**

**[admin@rblawyers.com.au](mailto:admin@rblawyers.com.au)**