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Side Deals and Handshake Promises: The Risks for Lenders and Directors After Gallo v Saad

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Private lenders and directors often do business and advance loans on the strength of relationships. When a refinance comes up, there can be pressure to sign quickly and settle the details informally between the individuals involved. The NSW Supreme Court's decision in *Gallo v Saad* [2026] NSWSC 1066 shows how costly that can be.

Key Lessons for Private Lenders and Directors

Before advancing funds, restructuring debt or agreeing to a refinancing arrangement, private lenders and directors should obtain legal advice and ensure the arrangement is properly documented.

What happened

A private lender (Lender) had advanced several million dollars to a property development company (Borrower) under a properly documented, secured loan. When the Borrower needed to refinance the project, the incoming financier required the Lender to sign a Deed of Subordination which postponed repayment of the Lender's loan until the new financier was paid out in full.

The Lender agreed, but only after the Director of the Borrower personally promised to repay the debt in instalments. The Director paid a first instalment of $1 million and nothing further.

The Court accepted that the promise had been made, but found it unenforceable for two reasons, either of which was enough to defeat the claim. First, the informal "handshake" arrangement did not objectively show an intention to be legally bound. Second, it directly contradicted the Deed of Subordination that the Lender had just signed. The Lender lost and was ordered to pay the Director's costs.

Note that in this case the Lender was an unrelated third party. However, the same principles would apply to a director's or shareholder's loan made to a company.

The risks for clients

A proven promise can still be worthless

The Lender won the factual argument and still lost the case. Proving what was said is not enough if the arrangement is not a binding contract.

A side deal cannot undo your formal documents

A court is unlikely to enforce a promise designed to work around a subordination deed, priority deed or loan agreement you have signed. The Court was critical of side arrangements that subvert a main agreement, particularly where a third party such as a senior financier relies on it.

Your own track record can be used against you

Both parties had previously used lawyers to document their dealings. The Court found it striking that they abandoned that approach for the refinance, and this weighed against finding a binding agreement.

You are bound by what you sign, even if you only see the signing page

One of Lender's directors signed only the execution page of the Deed without knowing what it was. He was still bound by it.

Security can erode one concession at a time

Before the refinance, the Lender agreed at the Borrower's request to remove a caveat and a PPSR registration. Each concession kept the project moving, and each weakened the Lender's position.

The evidence may not be there when you need it

Key terms existed only in text messages, and the record before the Court was incomplete.

What you should do

1. Get legal advice before advancing a loan to a company whether as a third-party lender or a shareholder/director.
2. If you have advanced a loan to a company don't agree to any refinance, subordination, variation or priority arrangement without getting advice on it, however urgent it seems.
3. Read the whole document before signing and never sign an execution page on its own.
4. Record any new commitment in a written document intended to be binding and signed by the correct parties.
5. Be clear about capacity: which entity is lending, who is liable, and whether anyone is giving a personal guarantee.
6. If you need protection in exchange for subordinating, negotiate it into the formal transaction documents with the senior financier's knowledge. Do not rely on a separate understanding that cuts across them.
7. Before releasing any security, get advice on what you are giving up and what you are receiving in return.
8. Confirm oral discussions in writing promptly and keep a complete record of communications.
9. Document changes to an arrangement with the same care as the original deal.

Takeaway

Refinances, priority concessions and repayment arrangements can matter as much as the original loan. In *Gallo v Saad*, a lender who had documented the loan properly lost its protection at the critical moment because the later deal was left to a handshake. If a promise is important enough to rely on, it is important enough to document properly and consistently with everything else you have signed.

At ClarkeKann, we help private lenders, directors and shareholders structure, document and protect their lending arrangements.

Further information

If you are considering advancing funds, varying existing arrangements or reviewing your current lending documentation, please reach out to [Miles Anderson](), Hamish Black, Riley Liu or your usual ClarkeKann contact.