



THOSE INDEPENDENT CONTRACTOR ARRANGEMENTS- AGAIN!

In a recent decision the High Court has refused the applicant, Dental Corporation Pty Ltd, special leave to appeal against the Full Federal Court's decision in *Dental Corporation Pty Ltd v Moffet* [20 ESL 07](#); [\[2020\] FCAFC 118](#) (the Moffet case).

In the Moffet case, the full court dismissed an appeal against the Federal Court decision (at [\[2019\] FCA 344](#)) and held that a dentist under a services agreement was not an "employee" under the common law definition but did come within the extended meaning of "employee" in s [12\(3\)](#) of the Superannuation Guarantee (Administration) Act 1992 (Cth) (SGAA). It found that the dentist was working "under a contract that was wholly or principally for the labour of the person".

Many medical and dental businesses are structured in a similar manner to the one considered by the Court in the Moffet case. One distinguishing feature in Moffet was that the professional fees generated by Dr Moffet were for the benefit of the company providing the administrative services, in this case Dental Corporation Pty Ltd. Dr Moffet then issued an invoice to Dental Corporation for the services he rendered to the company. It is more common for the medical/dental practitioner to be entitled to the fees generated by the practice and then an invoice is issued by and a fee is paid to the administrative entity (often a service trust) for the use of the premises and the provision of administrative services.

It would be interesting to see whether the Court would have found Dr Moffet to be an "employee" under the extended definition in section 12(3) of the SGAA if the more common structure had been used. In my view this is unlikely because the contract would have reflected a provision of services to the practitioner who would be carrying on his or her own practice, rather the practitioner providing his/her labour to the service entity. In my view, this more common structure is a better reflection of the relationship between the practitioner and the service entity. The service entity is not usually carrying on the medical or dental practice. It is the individual rather than the service entity who is obliged to have professional indemnity insurance and it will usually be the doctor or dentist who get sued for malpractice rather than the service entity. The Moffet case discusses the concept of two businesses being carried out in one structure and makes some interesting comments about goodwill in relation to these types of structures.



It is therefore very important to look very carefully at the contracts that doctors and dentists sign when setting-up these types of arrangements. In the Moffet case, it was held that he was an “employee” under the extended definition of employee in the SGAA which resulted in an obligation on Dental Corporation to pay superannuation in relation to Dr Moffet. It is not clear what then happened because under his contract, it stated that the payments made to him were inclusive of superannuation (in the event that it was payable). This could then have resulted in Dental Corporation being subject to the superannuation guarantee charge for failing to pay the superannuation to a fund of Dr Moffet’s choice and Dental Corporation seeking to recover the superannuation from Dr Moffet under the contract. In effect, they would both be losers.

This case is also a good illustration of what can happen when there is an unhappy end to a long-term independent contractor arrangement. Notwithstanding what the contract says, it is not uncommon for an aggrieved individual to seek additional compensation by claiming he or she was always an employee and should therefore be paid out for unfair dismissal, annual and long service leave, and superannuation.

There are benefits to all parties in establishing independent contractor arrangements, but they can be real pain if you get it wrong. So, be careful.

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

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