

**NZ LEGAL ETHICS AND
PROFESSIONAL
RESPONSIBILITY LAW
CASE NOTES**



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Contents

<i>Harvey v Phillips</i> (1956) 95 CLR 235	3
<i>Lewis v His Honour Judge Ogden</i> (1984) 153 CLR 682	7
<i>McDonald Estate v Martin</i> [1990] 3 SCR 1235	14
<i>Nangus v Charles Donovan</i> [1989] VR 184	15
<i>Norbrook Laboratories Ltd v Bomac Laboratories Ltd</i> [2004] 3 NZLR 49 (CA)	18
<i>Prince Jefri Bolkiah v KPMG</i> [1999] 2 AC 222	19
<i>Russell McVeagh McKenzie Bartleet & Co v Tower</i> [1998] 3 NZLR 641 (CA) Corporation	21
<i>Re Davies</i> (1947) 45 CLR 409	23

Sample

Harvey v Phillips (1956) 95 CLR 235

Source: Hard copy via your law library or electronically via a subscription service

Court details: High Court of Australia

Procedural history: The case was on appeal.

Facts:

- The appellant was a lady who complained that she had her will overborne by lawyers eager to settle her matter.
- As such the case involved the power and authority of a solicitor to settle a matter for their client.

Issue:

- The High Court was required to decide whether or not the solicitor had the authority to settle the matter.

Reasoning / Decision (Commentary):

- The High Court considered that her consent to the settlement, although fleeting was real, and therefore irreversible.
- The Court stated:

“About a fortnight earlier at a conference with the plaintiff’s senior counsel he recommended a compromise. At another conference on the Saturday before the trial he expressed the same view strongly. On the Monday, the day of the trial, a long drawn out attempt was made by her counsel to persuade the plaintiff to settle the action. It is unnecessary to state in detail what took place but it is plain that great pressure was exerted upon her to give her consent to a settlement. After a jury had been impanelled the court was asked to adjourn until twelve noon. During the negotiations between counsel which followed the defendants’ offer was increased to £4.000. The plaintiff however proved obdurate. According to her account a strange scene took place in the precincts of the court in which she was subjected in various ways to extreme pressure and persuasion by her counsel which she withstood. But even if her account be disregarded it sufficiently appears from the record that she resisted the advice to compromise and that counsel went to unusual lengths to overcome her resistance. After a time both her counsel and counsel for the defendants requested the judge to see the plaintiff in his private chambers. This his Honour consented to do. We know from a communication from the learned judge to the plaintiff what took place. His Honour informed her that both counsel had told him that they had arrived at a compromise verdict which they both considered to be fair. He told the plaintiff that the acceptance

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of the verdict was a matter entirely for her own decision but he understood that her counsel and her solicitor both strongly recommended the acceptance. He then told her that in her own interests she should consider their views carefully and not lightly cast their advice aside as they were both capable and experienced in litigation of that nature. The plaintiff replies to his Honour that she would never agree to settle the action that she would not accept their offer, that the amount offered was ridiculously inadequate, that their attitude towards her for years had been contemptuous and that she would not settle for any amount. She repeated this sentiment several times in different words and his Honour then said:- "Very well, Mrs Harvey, the case will go on" and terminated the interview. As she left his Honour's chambers the plaintiff said: "They are trying to force me to settle but I shall never agree". After this interview, however, further pressure was exerted upon the plaintiff to obtain from her a consent to settle the action. Mr Beard's evidence is that for about another quarter of an hour her senior counsel continued to urge the appellant to accept the sum of £4,000, that she on her side maintained her refusal to do so and reiterated that she would not settle. Mr Beard says that she was quite adamant that she did not want to settle. Ultimately counsel said to him: Well, if your client won't take my advice I will have to return the brief to you, but you talk to her for a while now. I am going back to my chambers for half an hour. If there is any change in her attitude before the half hour is up you come and get me." He put down his brief upon the table and went back to his chambers. There can be little doubt that the plaintiff was left with the impression that her senior counsel had thrown up her case. The junior counsel and solicitor, the plaintiff's daughter and a number of other people were left either in the conference room outside the court or in the passageway. At some stage, perhaps before she saw the judge in his chambers, phenobarb tablets were administered to the plaintiff, apparently with the object of reducing the excitement into which she had been thrown. According to the evidence of Mr. Beard, whose testimony has been accepted by the Supreme Court, he, the junior counsel and the plaintiff's daughter all urged the plaintiff to accept the offer of compromise. The plaintiff was at one stage again reduced to tears. A Mr. Darby, M.L.A., who had taken an interest in the case and was there as a friend, put his arm on her shoulder and said: "There is no need to get any more upset about it, Joan. We are all trying to do our best for you ", and she said "All right I will take it." Mr Beard said that, if she was prepared to take it, he would go over and get counsel from his chambers. This he did and

counsel for the parties took their seats at the Bar table. Ultimately the defendants counsel were informed by the plaintiff's counsel that she would accept the offer of £4,000 and senior counsel on each side wrote out and signed a paper entitled "Terms of Settlement.". Its contents were: "By consent -1. Jury to be discharged. 2. Verdict for Plaintiff of £4,000. 3. Terms not to be disclosed." The judge took his seat in court, the paper was handed up to him and his Honour congratulated the parties on reaching a settlement of the action and said that he considered it was a satisfactory settlement for all concerned."

Ratio:

- The Court stated:

"The difficulty in the present case lies in the very unwilling and ephemeral character of the consent which the plaintiff was led to give. But it is enough if she expressed a real intention to consent, even if experience might have suggested that it was an attitude she was not likely to maintain. In the circumstances one might have expected that she would be asked to sign a written authority. But that was not done. However the finding of the Supreme Court, supported as it is by evidence, suffices to establish that she definitely did give her authority, however reluctant it may have been. It is impossible to regard the authority she thus gave as insufficient to support the compromise. The issue is one which must be considered from the defendants' point of view as well as from hers. When the defendants accepted the compromise requiring them to pay £4,000 they believed that thereby they were putting an end to the litigation. They acted upon the statement made by her counsel that the compromise was made with the authority of the plaintiff. Once it appears that the plaintiff did in fact give an assent which had not been withdrawn up to the moment when the terms of settlement were signed, it can be nothing to the point to say afterwards to the defendants that it was the result of her real desires or her judgment being overborne by her advisers, whatever may have been the degree of moral pressure that she felt."

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