

**MAVEN DENTAL GROUP PTY LTD v S & M ENGLAND PTY LTD & ORS [2018]  
QSC 220**

**CASE REPORT FOR DENTISTS**

1. On 7 September 2018 judgment was delivered *ex tempore* by Justice Henry in Cairns in relation to a dispute over contract between Maven Dental Group Pty Ltd (the Plaintiff) and a dentist, and his corporate entities ( the defendants).
2. The background to this is that Dr England sold his dental practice to Maven on 17 February 2015 and there was a Facilities & Services Agreement (“FASA”) by both the dentists involved but relevantly by Dr England.
3. The FASA contained provisions for termination including that the company may terminate in the event that in the reasonably held opinion of the company, the practice entity has committed an act which if true would in the opinion of the company adversely affect the reputation or business of the company conducted from the premises or the practice entity is guilty of any willful or negligent misconduct.
4. The dentist was accused of harassment and an investigation ensued and then on 20 July 2015 some five months after the practice sale, Maven gave notice of its termination of the Facilities & Service Agreement.
5. The practice continued in operation after the termination but despite Maven’s attempts to replace the dentist, the profitability of the practice, not surprisingly perhaps, declined.
6. The amount of the award sought by way of loss of profits was \$1,387,372.00 plus interest. There was a counter claim for outstanding payments by the dentists but in the end the amount that Justice Henry awarded was \$1,227,500.00 and using the court costs calculator, an interest award of \$218,953.23, resulting in a total award of \$1,446,453.23.
7. What is relevant perhaps for owners of dental practices is the importance of the clauses and the breadth of those termination provisions in any Facilities & Service Agreement.
8. Because of the breadth of the clause and the way in which the termination operated, Maven was successful on this occasion. It is probably fair to say that that would not always be the case.
9. The relevant factors for dentists who work pursuant to these Facilities & Service Agreements is that the obligations on them in terms of conduct are serious, and clearly the consequences by way of termination early into a contractual period for a fixed term – as was the case with this contract, can be severe.
10. At paragraph 61 of the Judgment, Justice Henry points out why that although the profits compared from 2014 to 2017 are similar, and an argument might be

made that there was no impact on the profitability of the practice, there were two points that would be overlooked.

11. The first is that the economies of scale available to Maven and the reduction of the costs of dental material supplies and laboratory fees was significant in their ability to essentially maintain the same practice income.
12. The other consideration of course is that this overlooks a distinction of comparing the operations of the practice in the absence of the dentist without taking into account the inability of Maven to have found, identified or engaged with a dentist who would generate the same income as the previous dentist.
13. Some discussion ensues at paragraph 62 to paragraphs 68 which is insightful and instructive for those practitioners endeavouring to understand the application of contract law to these Service & Facility Agreements and construction of contracts in terms of loss of profits.
14. There was a discount at paragraph 72 of some 12.5% because of the inability to be precise about what would have been earned, being an agreed discount between the parties.
15. It is important to note that although there were two experts, they gave evidence in a conclave and so the position of the expert evidence by the accountants was agreed.
16. This case does not so much articulate new law and in fact only cites very limited case law and the majority of the decision turns on contract interpretation.
17. This was a five day hearing which ran from the 3<sup>rd</sup> to 7<sup>th</sup> December and Justice Henry delivered his judgment *ex tempore*, meaning at the end of the trial on 7 September 2018.

### **Conclusion**

18. Any person signing a commercial contract for the sale of a business practice ought to not only get appropriate expert advice but also needs to understand that corporate buyers of practices have been on a number of occasions demonstrated to be willing and able to run superior court actions to recover damages from practitioners who do not abide by the terms of their Facilities and/or Service Agreements.

B Wright  
Barrister  
October 5<sup>th</sup> 2018