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Property Law e-alert

Terminating Contracts & Reserving Rights

A recent Supreme Court of Queensland case has provided a timely reminder that if parties to a contract wish to reserve or exercise their rights to terminate, they must do so quickly and clearly to avoid losing their termination rights.

A decision of the Supreme Court of Queensland handed down on 14 September 2009 highlights the problems that can arise when property contracts falter and unclear communications are sent between the contracting parties.

This case, *Scali Properties Pty Ltd v Crittenden & Another (2009) QSC290*, involved the sale and purchase of two residential units on the Gold Coast. The contract price for each unit was \$850,000. The contracts were conditional on finance being obtained by the buyers to complete the purchases. The buyers were required to notify the sellers on approval of finance by a specified date; failure to obtain finance, or failure to advise the sellers that finance had been obtained gave rise to the sellers right to terminate the contracts.

The date for the finance condition to be satisfied came and went, and the buyers failed to notify the sellers in relation to the satisfaction of the finance condition. The sellers therefore gained a right to terminate the contracts by notice to the buyers.

The sellers did not raise the issue of the buyers failure to notify them regarding the finance condition. The sellers continued to correspond with the buyers solicitors in relation to the early release of the deposit, extension of the settlement date and adjustments to the purchase price of the units.

Negotiations eventually broke down. Consequently, on a date two weeks after the finance condition was due to be satisfied, the sellers solicitors gave notice to the buyers solicitors that the contracts were terminated due to the buyers failure to notify the sellers that finance had been obtained. The buyers did not accept the termination, and sought an order from the Supreme Court that the contracts had not been terminated and that the sellers were required to complete.

The Court agreed that initially the sellers had gained a right to terminate the contracts due to the buyers failure to give notice in relation to finance. However the Court also held that the sellers had waived their right to terminate by their conduct in continuing to negotiate with the buyers solicitors as if the contracts were still in place.

Additionally, the sellers solicitor did not advise the buyers solicitors that their clients rights in relation to the failure to advise regarding finance were reserved. Instead the sellers solicitors continued to correspond with the buyers solicitors on an open, rather than "without prejudice", basis.

The Court therefore ordered that the contracts were enforceable, requiring the sellers to complete.

The case confirms the principle that if a contracted party gains a right to terminate, the right must be reserved or exercised quickly and unambiguously.

Contacts

Ned Boyce, Sydney (City)	+61 2 9391 3001	eboyce@hunthunt.com.au
Ian Miller, Sydney (North West)	+61 2 9804 5704	imiller@hunthunt.com.au
Bill Hazlett, Melbourne	+61 3 8602 9259	bhazlett@hunthunt.com.au
Lynette Reynolds, Brisbane	+61 7 3292 9735	lynette.reynolds@macrossans.com.au
Egils Olekalns Adelaide	+61 8 8414 3342	eolekalns@hunthunt.com.au
Darren Miller, Perth	+61 8 9488 1300	darren.miller@marksandsands.com.au
Antony Logan, Hobart	+61 3 6210 6213	alogan@huntingtas.com.au
Chris Osborne, Darwin	+61 8 8924 2600	cosborne@huntnt.com.au
Pauline Tregenza, Newcastle	+61 2 4925 5587	ptregenza@hunthunt.com.au

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