

For a smooth, hassle free conveyancing solution...

Seller may still be bound if PAMD Act not followed

The Supreme Court of Queensland has ruled that if a fully signed copy of the contract is not given to the buyer or buyer's solicitors in the correct procedure, then while the buyer **may** not be bound by the contract, the seller **is** still bound under the contract.

The Court also talked about:

1. The type of facts they will take into account when considering whether the buyer was coerced into signing the contract against his will; and

2. What can happen if the seller refuses to allow the buyer's valuer access to the property.

In the case*, parties entered into a contract for a property in Bowen for \$170,000 on 15 July, 2002.

The seller tried to terminate the contract on the following basis:

1. When he signed the contract, he was adversely affected by alcohol and lack of sleep and was forced into signing the contract against his will.

2. He terminated the contract before the buyer received a copy of the contract, and therefore he was not bound by the contract.

3. The buyer failed to advise finance approval by the due date...breaching the contract in a way the seller claimed allowed him to terminate.

The court found that the seller was not adversely affected as he claimed, and took note of the fact that other staff in the Agent's office, when dealing with the seller, had not noticed anything unusual in his behaviour.

The court further found that because the seller had refused to allow the buyer's valuer onto the property, he had breached the contract and could not rely upon the buyer's failure to advise finance by the due date as a ground to terminate.

Finally the court found that even though the legislation said that the buyer and seller are not bound by the contract until the buyer receives a fully signed copy of the contract the seller was bound by the contract prior to the buyer receiving a copy.

The judge indicated that section 365 alters the common law position of a buyer, and that a buyer will not be bound by a contract, and can withdraw his offer to purchase by giving notice of withdrawal in writing before the buyer/ buyer's agent receives a copy of the contract signed by both parties.

The judge stated further that section 365 should not be regarded as allowing the vendor to pull out of a contract simply because of noncompliance with section 365.

In summary...

We recommend to avoid the above problems, you do the following:

1. If a buyer or seller alleges that undue pressure was placed on them to sign a contract, that you obtain statements from any people who may have coming into contact with the buyer or seller, prior to them signing the contract, for the purposing of showing that the person was not incapacitated (e.g. drunk) in any way.

2. You send a fully signed copy of the contract by facsimile to the buyer's solicitors as soon as the last party has signed the contract.

3. If the buyer needs access to the property to fulfill any special condition, or the standard conditions relating to finance and building & pest, then you make sure that they have access to the property, and warn your seller that they have to make the property available for those purposes.

*Grieve v Enge...if you'd like to read more on this case please contact us on 4963 0800 or email mackay@swc.net.au

This newsletter is for the general information of McKays' clients and associates. The information contained in the newsletter should not be relied upon without first consulting us and obtaining specific advice.

Update...New Warning / Information sheet for Unit Contracts

The warning/information sheet which is attached to the front of a unit contract under the BCCM form 14 warning statement has changed from 1 May, 2006. The old form may be used until 1 November, 2006 after which the **failure to use the new form will give the buyer the right to terminate the contract at any time prior to settlement.** The new form may be accessed via the links page on our website. www.swc.net.au

If you need any further help please contact Roland Taylor in our Mackay office on 4963 0800 or rtaylor@swc.net.au

May/June 2006



Statewide Conveyancing

Use the property specialists.. the hassle-free conveyancing solution!

Our efficient and friendly staff will:

- Keep you informed
- Respond quickly to your calls
- Provide accurate legal advice when required
- Be one step ahead, to avoid possible problems

In Addition, we will provide:

- Fixed Fees
- No hidden extras
- Immediate access to experienced solicitors if required.