



Changes to off-the-plan unit contracts

Property Law Update – 24 June 2009

The Queensland Government has reacted quickly to the decision of *Bossichix Pty Ltd v Martinek Holdings Pty Ltd [2009] QCA 154 (Bossichix)* by passing the Body Corporate and Community Management Amendment Bill 2009 to rectify an unintended consequence of the Body Corporate and Community Management Act 1997 (BCCMA).

The decision of Bossichix

The decision of Bossichix highlighted the potential for many pending off-the-plan unit contracts to be at risk of cancellation as a result of a strict interpretation of the former s212 of the BCCMA.

The former s212 of the BCCMA provided that a buyer could cancel a contract for the purchase of a proposed lot in a community titles scheme if the contract did not provide that *'settlement must not take place earlier than 14 days after the seller gives advice to the buyer that the scheme has been established or changed'*.

Section 24 of the BCCMA provides that establishment of a community titles scheme occurs only when both the plan of subdivision is registered and the community management statement for the scheme is recorded.

In Bossichix, the Court of Appeal held that a contract providing for settlement to occur 14 days after notice to the buyer that the relevant plan of subdivision was registered was not sufficient to satisfy the former s212 of the BCCMA as it did not refer to scheme establishment or the recording of the community management statement with the plan of subdivision. Consequently, the buyer's cancellation of the contract was upheld.

The intention of s212 of the BCCMA was to provide consumer protection by setting out the pre-contract disclosure requirements for buyers of proposed lots in a community titles scheme. The Court of Appeal acknowledged that the purpose of s212 of the BCCMA is to inform the buyer that the scheme has been established to allow sufficient time before settlement for the buyer to make any necessary searches and enquiries.

Off-the-plan unit contracts can no longer be terminated for failure to refer to the establishment of a community titles scheme...

Amendments to the BCCMA

The new s212 of the BCCMA provides further clarification to the requirements of a contract for settlement to take place by deeming the contract to contain the term, 'providing that settlement must not take place earlier than 14 days after the seller gives advice to the buyer that the scheme has been established or changed', even if the contract does not do so.

Further, a new s362A of the BCCMA is inserted to provide for the new s212 of the BCCMA to have retrospective affect to a contract whether entered into before or after 5 June 2009. This provision provides for the exclusion of contracts already settled, contract already cancelled before 5 June 2000 pursuant to the former s212 of BCCMA and legal proceedings decided before the commencement of the amendments.

These amendments will ensure that contracts cannot be cancelled based on a mere technical breach (an omission of reference to the establishment of the community titles scheme).

Rostron Carlyle has expertise in preparing off-the-plan contracts for many clients. For any enquiries about off-the-plan contracts and compliance requirements, please do not hesitate to contact us.

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