

Property Law tested by Developer

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Jobema Developments Pty Limited is the first developer to test the new property law introduced by the Conveyancing Amendment (Sunset Clauses) Act 2015, which requires vendors to either obtain the consent of purchasers before they can rescind an off-the-plan contract in reliance on a sunset clause in the contract, or to obtain the permission of the Supreme Court to do so.

Facts:

In this case, Jobema, the defendant, purchased a development site from Xycom, who had exchanged a number of off-the-plan contracts with a sunset date for the registration of the strata plan of 31 December 2015. As part of the purchase, Jobema would assume Xycom's obligations under the exchanged off-the-plan contracts, one of which was with Mr Wu.

Xycom had carried out minimal work on the project before it had been sold. While Jobema commenced work immediately, the project was not completed by the sunset date. As required by the new legislation, notice of the proposed rescission was served on Mr Wu and the notice cited several reasons for the delay and the proposed rescission. Mr Wu did not consent to the rescission and Jobema subsequently applied for leave in the Supreme Court under the Conveyancing Act.

Decision:

The court found against Jobema and held that an order permitting the developer to rescind the contract was not just and equitable in the circumstances. While the court did not find Jobema had acted unreasonably or in bad faith, and that Jobema had begun construction as soon as was possible, they could not rely on Xycom's error in not beginning work sooner. The court also noted that the retrospective impact of the changes to the property law is not a relevant factor when making a decision.

If you have exchanged any off-the-plan contract and believe the change in property law regarding sunset clauses will affect you, contact one of our property lawyers or property dispute lawyers who can provide you with the property legal advice you need on 02 9635 7966 or email info@matthewsfolbigg.com.au.

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