

Unjust Put and Call Options - When a developer Comes Knocking

Date : December 5, 2018

When a developer approaches you to buy your home (and you're interested), you need to ensure you get as many facts as you can and seek legal advice. Sometimes the developer may not wish to purchase your land straight away, and you may enter into an agreement to sell and purchase land in the future.

A 'Call option' is essentially an approved right granted to the buyer by the seller of a property. This right requires the seller to sell the property to this buyer on the agreed terms at a future point in time. For example, you agree to sell your home to the developer in 2 years for a million dollars. A call option is beneficial in that the price agreed upon will not change irrespective of pricing fluctuations in the property market. A 'put option' is an approved right granted to the seller by the buyer. This right enables the seller to request the buyer to buy the land at a future point in time.

In *Al Maha Pty Ltd v Coplin (2017)*, a property developer (Al Maha) offered \$2 million, after an 18 month settlement, to a homeowner (Mr Coplin) for his St Leonards home by way of a put and call option agreement. The negotiations between the parties resulted in Mr Coplin attaining a \$200 000 increase in the price offered by Al Maha. This was made on the basis of recent property sales in the area, the potential rezoning and his readiness to wait for the sale for 18 months. The ensuing agreement gave Al Maha the right to purchase the property for \$2.2 million, as per the call option, and gave Mr Coplin the right to oblige Al Maha to do so, as per the put option.

Mr Coplin signed the Option Agreement without seeking independent legal advice. It was held that the agreement was 'unjust' under s7 (1) of the *Contracts Review Act 1990* (NSW). Mr Coplin sought relief on the basis that he did not have the opportunity to seek legal advice with regard to the put and call option agreement, and that the agreement was entered into under commercial pressure tactics by Al Maha. Mr Coplin further sought relief on the basis that at the time of signing the agreement, he did not understand that as a result of the call option, he had a high risk of losing his home during the 18 month period and as such, signed the agreement without giving his fully informed consent.

It was held that the agreement was unjust and that Al Maha had exerted commercial pressure on Mr Coplin to exchange contracts and as a result of this pressure, Mr Coplin was deprived of the opportunity to seek independent legal advice regarding the agreement. As Mr Coplin was unable to seek such legal advice, he lost the opportunity to fully understand the terms of the contract and the effect the call option would have on his finances. Al Maha were deemed to have acted unfairly in knowing Mr Coplin was unaware of the true value of his home, and unaware the offer made by Al Maha was well below its true market value.

Put and call option agreements may offer benefits to both buyers and sellers. However, there

are several legal and financial risks which may arise when entering into an agreement concerning real property. If a developer approaches you, it is recommended that you seek legal advice and get an independent valuation before signing any agreements.

Other things to consider when you are approached by a developer:

- Have you obtained an independent valuation?
- Have you made enquiries with the Council in regards to zoning changes? (for example if the zoning is changing, this could increase the value of the property)
- Is the sale dependant on a development application being approved?
- Developers can be pushy (i.e. constant phone calls) so be careful to not get pressured into making a rushed decision.

Please get in contact with our property team at Matthews Folbigg Lawyers.