[2006] QSC 219

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

de JERSEY CJ

Application No 292 of 2006

BLUESTONE HOLDINGS PTY LTD (ACN 110 612 470) as trustee for the Bluestone Trust	Applicant
and	
JUNIPER PROPERTY HOLDINGS NO 14 PTY LTD (ACN 099 125 265)	Respondent

CAIRNS

..DATE 01/08/2006

JUDGMENT

THE CHIEF JUSTICE: By this application the applicant seeks a declaration that it was entitled to cancel a contract dated 21st February 2005 providing for its purchase of a proposed lot in a community title scheme.

Before the time due for settlement, and on 22nd June 2006, the solicitors for the applicant wrote to the solicitors for the respondent cancelling the contract.

The right of cancellation was said to arise from section 213 subsection 6 of the Body Corporate and Community Management Act 1997. That says that a purchaser may cancel such a contract if the seller has not complied with subsection 5.

Subsection 5 obliges the seller to attach to the contract what is termed an information sheet. In this case that fell to be attached immediately beneath a warning statement required by the Property Agents and Motor Dealer Act 2000.

Subsection 5 says that the information sheet is to be in the approved form. This seller attached a superseded version of the information sheet. The requisite forms are approved by the Chief Executive Officer. It suffices to say that the seller attached version 4 whereas it should have attached version 5.

The differences are really quibbles. Version 4 is unsurprisingly headed "Version 4" whereas version 5 is unsurprisingly headed "Version 5". The second difference

between the two documents is that version 4 does not specify its "commencement date" whereas version 5 does.

The third difference appears under the heading "What help is available to owners". The difference concerns the name of a Government department. Version 4 relevantly reads:

> "The Department of Tourism, Racing and Fair Trading has a free call telephone 'Community Titles Advisory Service' to answer queries by owners on community title scheme matters. Owners use this service for advice on such matters as - determining responsibility for repairs, how to conduct a committee election, what type of resolution is necessary in a particular situation, how to enforce a by-law et cetera. You may contact this service by telephoning 1800 060 119.
>
> The department also offers a dispute resolution service for settling disputes between owners and between owners and their body corporate. There are a variety of means available for resolving disputes including mediation, formal order or specialist assessment. For information on this service telephone the Office of the Commissioner for Body Corporate and Community Management, Department of Tourism, Racing and Fair Trading phone 0732277654 or 0732277899".

Version 5 is in precisely the same terms save that it specifies the by then correct name of the department, which had changed from Department of Tourism, Racing and Fair Trading to Department of Tourism, Fair Trading and Wine Industry Development.

The important point is that the telephone numbers remained the same and the reference to the Office of the Commissioner for Body Corporate and Community Manager remained the same. In short, the difference would appear to be inconsequential and not such as relevant, to mislead a reader of the document.

In MNM Developments Proprietary Limited and Gerrard [2005] QCA230 the Court was concerned with the requirement to attach a warning statement required under the Property Agents and Motor Dealers Act 2000.

Mr Philp, who appears for the applicant, has drawn attention to paragraph 16 of that judgment where I said that in effect the requirement to attach the warning statement should not be liberally interpreted and I referred to some sections which indicated that purchasers were given a right to terminate

> "Even for quite technical contraventions and whether or not the purchaser has suffered any material disadvantage".

He referred also to paragraph 21 where I suggested that the legislature had considered "an exacting obligation" justified to secure the goal of consumer protection. The issue being addressed in that case was obviously different from the issue here.

Going to section 213 of the Body Corporate and Community Management Act 1997 one sees that two documents are to be attached. The first one called "the first statement" has to be completed by the seller. Details have to be included into a pro forma document.

Subsection 4, then, provides that the document must be "substantially complete". That provision was included to avoid the sort of quibbles which characterised the 1980s in relation to home unit contracts which occupied so much litigation and wasted so many people's resources.

Subsection 5 requires that the information sheet - the second document - be in the approved form. Subsection 5 is not followed by a provision like subsection 4. There is no provision, in short, in the Body Corporate and Community Management Act, saying that substantial compliance with the approved form will suffice.

Mr Sofronoff, who appeared for the respondent, submitted that was because the legislature considered applicable section 49 of the Acts Interpretation Act 1954. It says that:

> "If a form is…approved under an Act, strict compliance with the form is not necessary and substantial compliance is sufficient."

Plainly, in this case, the version of the form which was attached to the contract substantially complied with the version of the form which should have been attached to the contract.

But Mr Philp submits that section 4 excludes reliance on section 49, subsection 1. Section 4 provides that:

> "The application of this Act may be displaced wholly or partly by a contrary intention appearing in any Act."

Mr Philp draws from the Body Corporate and Community Management Act, by an approach which impressed the Court of Appeal in MNM Developments Pty Ltd and Gerrard, an intention that strict compliance with, in this case, version 5 of the form was required. I do not accept that submission.

Support for the contrary position emerges from section 4, paragraph (f) of the Body Corporate and Community Management Act, which states as one of the secondary objects of the Act:

> "To provide an appropriate level of consumer protection for owners and intending buyers of Lots included in Community Titles schemes."

It is, to my mind, obvious that substantial compliance with version 5, as achieved here, would provide that "appropriate level of consumer protection". It follows, in my view, that the purported cancellation of the contract, under section 213, subsection 6, was invalid.

I should mention a decision of her Honour, Justice White, in Celik Developments Pty Ltd and Mayes 2005, Queensland Supreme Court, 224, in two respects. Firstly, her Honour did not consider any arguable application of section 49 of the Acts Interpretation Act, and secondly, her Honour found that there were material differences between the documents which fell for consideration in that case. See paragraph 27.

I also mention, finally, the decision of Justice Gibbs in Equipment Investments Pty Ltd and MJ Dowthwaite and Co Pty Ltd, 1969, 16, Federal Law Reports, 23, where his Honour

offered guidance as to when divergence from a form should be considered substantial. He said this:

> "A divergence from the form would be substantial or material if it caused the statement to convey less information than the form requires, or to confuse or mislead the prospective hirer as to the matters which the form is designed to bring to his notice. The dealer is not entitled to abandon the form completely and to claim the right to represent the information to the hirer in a quite different way but, in my opinion, he does not substantially or materially depart from the form simply by including additional words, unless their presence in some way distorts or obscures or minimises the information which the form is designed to give."

The application is dismissed.

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THE CHIEF JUSTICE: With costs to be assessed. Thank you.
