

Correctly Exercising Options for Renewal of Leases

A NSW court case decided last year has highlighted the importance of correctly exercising options for renewal of commercial leases, and complying strictly with other lease terms

In the case of Westpac Banking Corporation v Kurobe Holdings Pty Ltd & Karovel Nominees Pty Ltd, the landlords leased premises in Sydney to Westpac in 1999. The first option for renewal was exercised by the tenant's agent in 2004.

In August 2008 the landlord's agent notified the tenant's agent that they would like the tenant to consider taking up the next option period. Later that month the landlords wrote to the tenant advising the tenant to send all future notices to the landlords at a different address. The letter written by the landlords was not addressed to the relevant leasing manager at Westpac (which was required under the terms of the Lease), nor was a copy of that letter sent to the tenant's agent, and as a result both the tenant and its agent were unaware of that letter.



Partner, Roger Harkin

In October 2008 the tenant's agent gave notice of the tenant's exercise of the option to the landlord's agent. A few days later the landlord's agent acknowledged receipt of that exercise of option. However in December 2008 the landlords claimed the tenant had not effectively exercised the option as the notice was not sent to the new address set out in the landlord's letter.

The Supreme Court of New South Wales found the tenant had in fact exercised its option for renewal successfully as the landlord's letter advising of the change of address did not comply with the terms of the lease, and the landlord's letter did not make the tenant's notice of exercise of option invalid. In addition, the landlords were estopped from denying that the notice had been served effectively as the landlords were aware of the tenant's belief that serving the notice on the landlord's agent was effective service, and the landlords did not notify the tenant that this was not the case in time, thereby preventing the tenant from correcting the situation.

To enquire about any aspect of commercial and retail leases, please call to speak to our experts;

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Flood Damage and Contracts



Lawyer, Belinda McMillan

The recent Australian floods have created difficulties for people who have entered into contracts in relation to property, whether they are commercial or retail leases or purchase contracts. There has also been publicity recently about difficulties with insurances and the uncertainties of whether policies actually cover flood damage or not.

Negotiation by the parties to try and resolve their disputes is invaluable, and a recent case in the Supreme Court of Queensland illustrates the difficulties which can arise by taking these issues to court. It dealt with a purchaser who had agreed to buy an apartment on the ground floor of a building in Brisbane, which included basement car parking and storage.

The Brisbane floods occurred before settlement, both basement levels were inundated and water also entered the ground floor apartment. The developer offered to clean up and restore the apartment and offered a delayed settlement date four months later.

The purchaser sought to rescind the contract under Section 64 of the Property Law Act 1974 (Qld) which provides that if before completion of a contract the dwelling is damaged so as to be unfit for occupation, the purchaser can rescind the contract. The purchaser sought an urgent court declaration that the contract had been rescinded and also submitted that occupation of the premises would be illegal under Fire Safety and other Health and Safety Regulations.

The Qld Supreme Court decided that on the facts of this case, there were uncertainties about the application of the legislation. Even though the court acknowledged the delay and cost of a lengthy court hearing, it said that the matter should go to a further trial, and the purchaser would be adequately protected in the meantime by an order extending the date for completion, without prejudice to her right to maintain that the contract had been validly rescinded. The court therefore deferred making a final decision on the facts, and perhaps anticipating that the parties may have been able to negotiate a resolution before the trial in any event.

In NSW there are provisions in the Conveyancing Act which may apply to allow a reduction of price or rescission by the Purchaser, depending on the circumstances and the amount of damage caused to the property. The contract between the parties will also deal with claims for compensation by the Purchaser. Each state has its own separate legislation dealing with these issues.

There are many issues which will arise in relation to commercial leases where the premises are damaged, including who is responsible for repairs, rights of the parties to terminate the lease, and insurance provisions. All of these matters are usually dealt with in commercial leases, but there is a wide range of wording used in these clauses which may create different results. The circumstances of the damage caused in each case will also be crucial in determining how these issues are resolved, perhaps using alternate methods such as negotiation and mediation of the dispute.

For legal advice in relation to all Real Property matters and Commercial Transactions, please contact Roger Harkin of Owen Hodge Lawyers on 9549 0770

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