PROJECTS AND REAL ESTATE NEWS

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WELCOME

to Issue No. 8 of Projects and Real Estate News, Bell Gully's monthly digest on regulatory developments, together with cases and news of interest in the **projects** and **real estate** sectors.

IN THIS ISSUE:

CASE NOTES

REGULATORY UPDATES

OTHER NEWS

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CONTENTS

PAGE

Case Notes 3

✱ REAL ESTATE

- Misrepresentation and Fair Trading Act claims – Purchaser partially successful despite "no reliance/entire agreement" clause
- COVID-19 - downturn of trade and customers not reason for rent abatement
- Whether dairy processing plants were "farm land" under Overseas Investment Act
- Access to airspace at issue between developer and neighbouring property owners

■ PROJECTS

- High Court ruling offers lessons on payment schedules under the Construction Contracts Act

Regulatory Updates 9

✱ REAL ESTATE

- Overseas Investment Act: final stage of reforms take effect on 24 November 2021
- COVID-19 rent abatement provision in leases passed by Parliament

■ PROJECTS

- Reforms to construction money retention regime progresses through Parliament

Other News 11

✱ REAL ESTATE

- Sunset clauses in the spotlight as home buyers "speak out"

Need more information?

Projects and Real Estate News is a monthly digest on regulatory developments, together with cases and news of interest in the projects and real estate sectors.

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CASE NOTES

✱ REAL ESTATE

Misrepresentation and Fair Trading Act claims – Purchaser partially successful despite “entire agreement/no reliance” clause

Shabor Limited v Graham [2021] NZCA 448

In summary: Mr Graham (the **Vendor**) advertised his sheep and beef farm for sale by tender in 2014. The advertisement stated the farm “comfortably winters 7,500 plus stock units with capacity for more”. Shabor Limited (the **Purchaser**) inspected the farm and thought it would be suitable for deer farming. On the basis of the stock unit figure in the advertisement, they submitted an unconditional tender for approximately NZ$5.25 million, which was accepted by the Vendor.

The Agreement between the parties contained the following clause (the **“no reliance” clause**):

> “The Vendor does not warrant:
>
> a) the accuracy of any matter, fact or statement in any report or other information on the property prepared or provided by the Vendor’s [sic] or its Managers or Agents (including information contained in Schedules to this Agreement), any advertising of the sale of the property or any statement made except in relation to any specific warranty given in this Agreement; or
>
> b) any other matter relating to the property or its use or nature or the state of the property in any respect other than expressly set out in this Agreement.
>
> c) The Purchaser shall be deemed to have purchased the property solely in reliance on the Purchaser’s own judgement and upon its own inspection of the property and all other information regarding the property, and not in reliance upon any representative [sic] or warranty made by the Vendor, the Vendor’s Agent or Manager other than as expressly set out in this Agreement.”

Within a short time of taking over the farm, the Purchaser found the stock unit figure in the advertisement was incorrect, and began work on improving the farm’s carrying capacity.

The Purchaser sued the Vendor for misrepresentation and breach of the Fair Trading Act 1986 (**FTA**). They failed in the High Court, with the judge holding that although the statement about carrying capacity was a misrepresentation, the “no reliance” clause was conclusive between the parties in respect of the misrepresentation claim and did not break the chain of causation in respect of the FTA claim.

The Purchaser appealed. In the Court of Appeal, the Purchaser partially succeeded on the FTA claim, and again failed on the misrepresentation claim.

Court of Appeal judgment

The FTA claim

The Purchaser claimed the Vendor breached section nine of the FTA. That section prohibits a person in trade from engaging in misleading or deceptive conduct. It is accepted during the proceedings that the Vendor made a misrepresentation as to carrying capacity. The critical issue now was what effect, if any, the no reliance clause had on the FTA claim.

On its face the clause precluded the Purchaser from asserting that its reliance on the misrepresentation caused or contributed to its loss. However, the court noted previous case law which made it clear that whether a disclaimer of reliance clause was effective “would depend on the totality of the evidence”, and

in some cases could be "overwhelmed by the weight and effect of [the] assurances". The court said the clause formed part of the body of evidence to be considered but was not, in itself, determinative.

The court found on the evidence, that notwithstanding the no reliance clause and the fact that the Purchaser was legally advised, the Purchaser did rely on the misrepresentation. The evidence the court considered included the short timeframe between inspection of the farm and the tender closing date, meaning the Purchaser had no other source of information about carrying capacity, apart from what was in the advertising materials. The capacity representation was also very central and specific to the advertising whereas the no reliance clause was in general terms. This ground was made out and the quantum of damages was assessed as the difference between the price paid and the actual value of the farm as at the date of the agreement.

In the High Court the judge noted she would have reduced any damages awarded under the FTA claim by 40% due to the Purchaser's failure to protect its position, the most significant of which was the failure to make the tender conditional on due diligence.

However, the Court of Appeal substituted a 30% reduction instead, noting that while the failure to include some contractual protection in the tender justified a reduction, the very little time available to a purchaser viewing the property until the tender closing date meant that the only means of ascertaining the carrying capacity was by relying on the misrepresentation. It was also noted that even if a due diligence period was allowed for, the experts generally agreed that the best objective benchmark for assessing carrying capacity was during winter, which was some months after the settlement date. Therefore, even if a due diligence period was allowed for, it would not have led the Purchaser to discover the correct position — it could only have shown it was possible that the carrying capacity of the farm had been overstated.

The misrepresentation claim

As in the FTA claim, the no reliance clause was central to the misrepresentation claim. This claim was considerably focused on the application of section 50 of the Contract and Commercial Law Act 2017 (**CCLA**).

Section 50 of the CCLA applies where a contract purported to stop the court from inquiring into whether a statement was made prior to the contract and, if so, whether it constituted a representation and if so, whether the representation was relied on. If the contract contains such a term, then section 50(2) of the CCLA allows the court to inquire into these questions unless it considers it is "fair and reasonable" that the clause be conclusive between the parties, having regard to all the circumstances of the case, including: (1) the subject matter and value of the transaction, (2) the respective bargaining strengths of the parties and (3) whether any party had legal representation.

The Court of Appeal found on the evidence that it is fair and reasonable for the no reliance clause to be conclusive between the parties. It was significant that the no reliance clause was a "further term" rather than a standard term "obscured" in the "fine print" of the standard form ADLS agreement. The further terms addressed matters directly relevant to the Purchaser, and they amended some of the further terms (but not the no reliance clause). There was also no fraud on the Vendor's part, and no significant disparity on the parties' bargaining strengths.

Key takeaways:

- When selling a property, be careful of what is said to potential purchasers and in marketing materials, because even if an "entire agreement/no reliance" clause was included to protect the vendor, section 50 of the CCLA could be engaged so that a court may still investigate whether a party relied on a representation, unless the court considers it is fair and reasonable that the clause be conclusive between the parties.

- It is possible now to contract out of section nine of the FTA (which is where the Purchaser had in this case succeeded), under certain circumstances. When the agreement was signed in this case, it was not possible to contract out of the FTA. As seen in how the Court of Appeal approached the FTA claim in this case, whether a "no reliance" clause was effective could depend on "the totality of the evidence", rather than the clause being treated as determinative between the parties.

COVID-19 - downturn of trade and customers not reason for rent abatement

Mountfort v Cheam [2021] NZHC 1535

In summary: Ms Cheam (the **Tenant**) operated a bakery in Auckland from premises leased from the Mountforts (the **Landlord**). From March 2020 the Tenant's business was affected by lockdowns and other measures imposed by the government in response to the COVID-19 pandemic. The parties agreed on a rent reduction covering the period until October 2020.

The Landlord alleged the Tenant did not pay all the rent due in October and November 2020. Based on that, the Landlord issued the Tenant with notice under the Property Law Act 2007 (**PLA**) of their intention to cancel the lease. The Tenant refused to pay the amount because she disputed a rent increase that took place during the relevant period, and secondly she said she was entitled to a rent abatement for October and November for the effects of the government's COVID-19 restrictions. The Landlord applied for possession of the premises due to the Tenant's failure to comply with the PLA notice. The Tenant resisted the application. In the alternative, the Tenant applied under the PLA for relief against cancellation.

Firstly, the court held the terms of the lease were clear in respect to the rent increase that was disputed by the Tenant. The rent increase was effective.

Secondly, and the focus of this case note, was whether the Tenant was entitled to rent abatement. The lease was on the standard ADLS lease form and contained a "no access in emergency" clause that allowed for a "fair proportion" of rent and outgoings to cease to be payable if there was an emergency and the Tenant was unable to access the premises to fully conduct their business. "Emergency" includes an epidemic and the court acknowledged it was common ground that the COVID-19 pandemic falls within that.

The Landlord accepted that under Alert Levels 4 and 3, the "no access in emergency" clause was triggered. It did not accept that it was triggered in Alert Levels 2 and 1. Alert Level 1 required the Tenant to display a QR code in her premises. Alert Level 2 required display of the QR code and seating limits of 100 customers, plus social distancing requirements.

The Tenant argued the "no access in emergency" clause was not just about access, but also consideration of whether because of COVID-19 restrictions and effects on trading patterns, the ability to fully conduct her business had been restored. There was no argument that she was allowed access to her premises under Alert Levels 1 and 2. However, she said that "even with Alert Level 2 … the streets did not return to the busy level of pre COVID-19 restrictions", "for some of my regular customers the move to working from home has become permanent", and "even with being in Alert Level 1 I have elderly customers from the nearby retirement village who have advised that they will only return when they had a vaccine".

In short, her argument was the "no access in emergency" clause was "not just about access. It was also about the greatly reduced number of customers even when Alert Levels were lowered."

The court noted in clear terms, however, that the clause *is* about access, and that the clause was not triggered merely by a general downturn in custom caused by the pandemic. The Tenant's argument to that effect was rejected.

The court held the Landlord was entitled to possession and to cancel the lease, but the Tenant was granted relief against cancellation on various conditions, including that the Tenant pay the arrears and costs to the Landlord by a specified date.

Key takeaways: This case would likely continue to be relevant in the COVID-19 situation and as New Zealand moves into the new phase of the "traffic light system" under the COVID-19 Protection Framework as announced by the government. While tenants may be able to access their premises under certain levels within the system, there may still be other restrictions such as seating limitations and social distancing, together with wider effects of the COVID-19 pandemic that impact on trading levels and customer

numbers. These factors may lead the tenant to argue they were not able to "fully" conduct their business in the context of the "no access in emergency" clause. This case indicates the focus of the "no access in emergency" clause is about access, and a general downturn of business caused by the pandemic does not of itself trigger the clause.

It should also be noted that a law change which took effect on 3 November 2021 implies a covenant similar to the "no access in emergency" clause in the ADLS lease into commercial leases that do not contain such a clause. The law change is backdated to 18 August 2021. This case will be relevant to leases subject to the implied covenant, given its similarity to the "no access in emergency" clause. For more information about the law change, please click here for the Bell Gully client update on this topic.

Where the "no access in emergency" clause is triggered, the ADLS lease does not provide any guidance as to how a "fair proportion" of rent and outgoings to be abated should be calculated. The law change implying a similar covenant into commercial leases that do not contain such a clause states that the parties must consider any loss of income experienced by the tenant as a result of their inability to access the premises during an epidemic. Aside from this, the law change does not provide other guidance as to how a "fair proportion" is to be assessed. To that end it is noted that the Property Council New Zealand has recently published Draft Industry Operational Guidelines in Determining a Fair Proportion of Rent, which aims to assist the parties in resolving "fair proportion" rent and outgoings disputes due to lockdowns. The Guidelines are of an advisory nature, and as such are not legally binding in the case of a dispute.

Whether dairy processing plants were "farm land" under Overseas Investment Act

NZ Democratic Party for Social Credit Inc (SCI) v Minister for Land [2021] NZCA 599

In summary: Social Credit is a political party that challenged various aspects of the Overseas Investment Office's (**OIO**) decision to grant consent for the acquisition of shares in a major New Zealand dairy cooperative by an overseas company.

One of the key issues in Social Credit's challenge was whether the OIO was correct in concluding two dairy processing plants, built on land designated for industrial and commercial purposes, were "significant business assets" for the purposes of the Overseas Investment Act 2005 (the **Act**). Social Credit contested that the plants were "farm land", which falls within the definition of "sensitive (but not residential) land" in the Act. Under the Act, the acquisition of "sensitive (but not residential) land" is subject to more stringent consent criteria than if the acquisition is of "significant business assets".

"Significant business assets" is defined under the Act as including securities valued at over NZ$100 million. The relevant definition of "farm land" in the Act is land (other than residential (but not otherwise sensitive) land) used exclusively or principally for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock."

The important question therefore hinged on whether the processing plants were "used exclusively or principally for agricultural purposes".

In upholding the OIO was correct in classifying that the dairy processing plants did not come within the definition of "farm land", the Court of Appeal noted:

- After examining several definitions of the term in dictionaries, it is satisfied the "natural and ordinary meaning" of the term "agricultural" as it is used in the definition of "farm land" relates to the growing of crops and the raising of stock and the harvesting or extraction of primary products from those crops and animals on a farm.

- Where primary products are transported from a farm and processed elsewhere into other products, then the processing of those products *beyond the farm gate* does not come within the natural and ordinary meaning of an agricultural purpose.

This is an important point because Social Credit's key argument in this respect was "land used for the pasteurisation, homogenisation and processing of raw milk is land used for an agricultural purpose". To support this proposition, Social Credit also highlighted the definition of "agriculture" in the online edition of the Merriam Webster Dictionary: *"the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the* ***preparation and marketing of the resulting products***".

The court was not convinced this broader definition advanced Social Credit's case, having considered that this definition can be reasonably understood to mean the preparation and marketing of those products *before they leave the farm gate*.

- It was also satisfied that Parliament did not intend the meaning of "agricultural… purposes" and therefore "farm land" as advocated by Social Credit. Had Parliament intended activities not ordinarily associated with farming to come within the "farm land" definition, then it would have expressly said so, especially in the context of the Act, which was drafted with considerable care. Parliament also did provide for certain types of dairy processing plants to be covered by the Act when those businesses meet the definition of "significant business assets". There is nothing in the legislative history or elsewhere in the Act to suggest Parliament intended the processing plants would be both "significant business assets" and "sensitive (but not residential) land", particularly when treating the processing plants as "sensitive (but not residential) land" would involve adopting an unnatural meaning of "farm land" and "agricultural … purposes".

Key takeaways: On several occasions in this case, the Court of Appeal said it was a significant factor that the processing and manufacturing of dairy products by the dairy cooperative takes place only after raw milk is transported *from beyond the farm gates* to one of its processing plants. The court distinguished this from situations where (for example) artisan dairy or woollen products are produced by a farmer on their farm. A distinction is therefore drawn between the processing of primary agricultural products on a farm, as opposed to that processing taking place after it leaves the farm gates. Each case will fall on its own facts, but this case is likely to be a helpful reference on the question of whether processing plants are "farm land" for overseas investment purposes.

Access to airspace at issue between developer and neighbouring property owners

Victoria Lane Remuera Ltd v White [2021] NZHC 2228

In summary: Victoria Lane Remuera Limited (the **Developer**) wished to build an apartment complex and undertake the construction works using a flat top tower crane. The main boom and the counterweight boom of the crane will, from time to time, pass over adjoining properties at a height of approximately 33 metres above ground level. There are 31 persons or entities whose properties lie under the slew path of the main boom. The Developer sought consent from all of them to its proposal. Some consented but others remained silent. As a result, the Developer sought a court order under the Property Law Act 2007 (**PLA**) to authorise entry by its cranes to the airspace of the neighbouring properties. One of the owners (**Mr W**) opposed this order.

The application is brought under sections 319 and 320 of the PLA. Application can be made where the owner or occupier of land wishes to enter onto or over a neighbour's land to either erect the whole or any part of a structure on the applicant's land, or to do any other necessary or desirable thing in relation to the applicant's land.

There is no particular hurdle an applicant has to get over. In particular, an applicant does not have to show that there is no other way of achieving the purpose or purposes for which consent to enter is sought.

The court firstly acknowledged the accepted legal position that the owner of a fee simple title in land has rights in respect of the air space above the land. While the owner's rights in the air space above their

property do not extend to an unlimited height, the direct invasion of the immediate air space by artificial objects and projections such as wires and cables, advertising signs or the booms of cranes amounts to trespass and is actionable per se. In the absence of permission, any entry by the Developer into any neighbour's air space would be a trespass.

Having considered all the evidence, the court was prepared to grant the application and permit the Developer to enter and re-enter the air space over Mr W's property with the booms of a flat top crane, notwithstanding that this type of crane will result in a more significant intrusion into their air space. This option was more efficient, cheaper (which has consequences not only for the Developer but the purchasers of the apartments) and would take lesser time to complete the construction. That was in the interests of neighbours and of road users generally. It was also in the public interest that works close to the intersection be minimised insofar as is reasonably practicable.

In being prepared to grant the application, the court opined that the Developer should indemnify Mr W and the other owners whose properties will be affected. Further, that indemnity should be secured by a bond and, in the absence of any evidence to the contrary, the sum of NZ$1 million (as proposed by Mr W's solicitor) does not seem unreasonable. The court also considered there should be some provision for compensation to Mr W for the intrusion into their airspace. Further, it is preferable that the compensation provide for monthly payments rather than a lump sum. There will then be some incentive to the Developer to ensure that the crane is removed from the development site as soon as is reasonably practicable.

Key takeaways: This is a good reminder that ownership in land extends to rights to the airspace above the land. Developments and construction works may require access to the airspace of other properties, which may be granted by consent, an application under the PLA, or by an airspace easement. A PLA application may be more costly and lengthy to obtain, and may be preferable as a last option, as it requires the court's assessment into detailed evidence to inform the terms of any order (if such order is granted).

Bell Gully specialises in a range of real estate transactions, including complex and large-scale sales and purchases and developments. Please contact one of our real estate lawyers if you have an issue that requires attention – we would be happy to assist.

PROJECTS

High Court ruling offers lessons on payment schedules under the Construction Contracts Act

Templeton Kingsland Ltd v Dominion Constructors Ltd [2021] NZHC 2960

In summary: Bell Gully has published a more detailed client update on this case here. The below is a brief summary only.

This case concerned the construction of an apartment complex in Auckland, under an amended version of the NZS3910:2013 standard form construction contract. The Contractor argued the provisional payment schedule issued by the engineer was invalid because it did not comply with certain contractual requirements for payment schedules and did not contain the information required by the Construction Contracts Act 2002 (**CCA**).

Under the CCA, if no valid payment schedule is provided in response to a payment claim from the contractor by the due date, then the principal must pay the full amount claimed in the payment claim and the contractor may recover the unpaid portion of the amount claimed as a debt due under the CCA.

On the basis that the payment schedule was invalid, the Contractor issued a statutory demand against the Principal for the unpaid amounts. The Principal resisted and applied to the court to set aside the statutory demand. The Principal was successful – the court held it was arguable that the payment schedule was valid, and set aside the statutory demand. In doing so, the decision highlights some reminders for contractors and principals on the requirements of a valid payment schedule under the CCA:

- **An engineer is not required to personally issue the payment schedule, or value variations claimed in a payment schedule, in order for it to be validly issued under the CCA.**
- **It may be permissible to set out reasons for deductions in a separate annexed document.** In this case, the letter attaching to the provisional payment schedule recorded that the "full details of this draft certification of Progress Payment are as set out in the attached… Advice No 50". The court saw no issue with the fact that the reasons for the deductions were set out in the separate advice note or in the supporting summary table. The court noted that the "purpose of the CCA is not to allow contractors to recover amounts as debts due through technical arguments rather than genuine difficulties caused by a failure to indicate reasons". It was "artificial" to suggest that the contractor would not have considered the advice note together with the payment schedule.
- **A payment schedule may refer back to other documents and prior correspondence, if the parties "share a common understanding", and is not required to be read in isolation.**
- **A payment schedule may not be invalid merely because some of the reasons given in the payment schedule were wrong or incomplete.**
- **Recording a claim as "under review" may be permissible.** Some of the variation claims in dispute were listed in the payment schedule as still being "under review" by the engineer. In the circumstances of the case, the court held that this description was arguably sufficient, including because in one case the relevant variation claim had been made only 10 days before the payment schedule was issued.
- **A payment schedule may still be valid where insufficient reasons are provided for only a small number of deductions.**

Bell Gully has lawyers with specialist experience in construction law and procurement projects. Please feel free to contact one of our team if you need assistance with a construction law related matter.

REGULATORY UPDATES

✱ REAL ESTATE

Overseas Investment Act: final stage of reforms take effect on 24 November 2021

Bell Gully has published a more detailed client update on this topic here. The below is a brief summary only.

The final changes in the government's long-running reform of the overseas investment regime come into effect on 24 November 2021. The changes introduce stronger requirements for the advertising of farm land for sale, a new Benefit to New Zealand Test to assess applications to invest in sensitive land, the replacement of notional administrative processing timeframes with set, statutory timeframes to give more certainty to applicants, and changes to the offer back regime whereby the Crown has the right to acquire land under rivers, lakes and the sea (Fresh or Seawater Areas, formerly known as "Special Land") if the sensitive land being acquired includes such interest.

There is still more potential for change as the New Zealand Treasury and other government agencies are now assessing the forestry-related amendments introduced in 2018. Treasury is aiming for public consultation on proposed policy options in late 2021, before reporting on any recommended changes to the Associate Minister of Finance in 2022.

COVID-19 rent abatement provision in leases passed by government

Bell Gully has published a more detailed client update on this topic here. The below is a brief summary only.

The COVID-19 Response (Management Measures) Legislation Act (the **Act**) came into effect on 3 November 2021. The Act amends the Property Law Act 2007 by implying a covenant into certain commercial leases, requiring the landlord and tenant to agree on a "fair proportion" of the rent to be reduced if there is an epidemic and the tenant is unable to access the premises to fully conduct their business due to health and safety reasons related to the epidemic. The operation of the implied covenant is backdated to 18 August 2021, being the first day that Auckland was put into Alert Level 4 as a result of the current Delta outbreak.

"Fair proportion" is as agreed by the landlord and tenant, but in determining this the Act expressly requires the parties to consider any loss of income experienced by the tenant as a result of their inability to access the premises during an epidemic.

The leases subject to the implied covenant are those leases that (1) are operative between 18 August 2021 until this law change is revoked, and (2) do not contain a "no access in emergency" clause as defined in the Act. Leases on the standard form ADLS lease are therefore not affected as they contain a "no access in emergency" clause that meets the definition in the Act (provided that clause has not been removed or amended to fall outside the Act's definition by the tenant and landlord).

The implied covenant only applies to the extent that the parties have not already agreed on a rent reduction, before 18 August 2021, due to inability of access because of the epidemic. Parties to a lease can agree to contract out the implied covenant.

■ PROJECTS

Reforms to construction money retention regime progresses through Parliament

Bell Gully has published a more detailed client update on this topic here. The below is a brief summary only.

On 22 November, the Transport and Infrastructure Select Committee reported back on the Construction Contracts (Retention Money) Amendment Bill (the **Bill**). The Bill proposes significant reforms to the construction retention money regime, including the introduction of offences and penalties for both the firm holding the retentions and its directors for a failure to comply with the new regime.

The current regime

Commonly, construction contracts provide for the payer to withhold an amount of money from the payee as security for the payee's obligations. For example, a head contractor may retain money owing to a subcontractor as security for the subcontractor's performance, and may apply those monies to remedy any defect in the performance of the subcontractor's obligations.

A statutory regime governing retention money was introduced to the Construction Contracts Act 2002 in 2017 after Mainzeal's failure, to protect payees from the payer's (mis)use of retention money. However, a number of cases have illustrated issues with the current regime.

Changes proposed in the Bill

The Bill is intended to address the issues identified in the current regime and, if enacted as recommended by the Select Committee, will introduce a number of notable changes, including clarifying that retention monies will be held on trust directly by operation of law, imposing specific requirements as to the banking and use of retention money, and imposing greater record keeping and reporting obligations regarding retention money on the payer.

It also proposes that if the payer goes into liquidation or receivership, the liquidator or receiver becomes trustee of the retention money, although they can apply to be excused.

It is particularly worth noting that the Bill introduces a number of penalties for non-compliance, for example if the payer does not keep the retention money as required, and if the payer does not hold adequate records.

The Bill will now proceed through the parliamentary process before coming into force six months after royal assent. The new regime will then apply to construction contracts entered into, or amended, after the Bill comes into force. The provisions relating to receivership or liquidation will apply to receiverships or liquidations commencing after the Bill comes into force.

OTHER NEWS

✱ REAL ESTATE

Sunset clauses in the spotlight as home buyers "speak out"

The New Zealand Herald reports on home buyers "speaking out" that they are "being taken advantage of" by developers through the sunset clause in off-plan agreements. Sunset clauses are common in such agreements and allows the purchaser and vendor to cancel the agreement should the construction of the dwelling not be completed by a specified date – the "sunset date". Such clauses protect purchasers from being locked into the agreement when the project is facing delays with completion.

However, with the rapidly rising housing prices some buyers believe that developers are deliberately delaying the project so they can invoke the sunset clause and sell the property at "today's market price". One buyer interviewed in the article spoke of buying a West Auckland home off-the-plan in April 2020 for $600,000, which had a November 2020 completion date and June 2021 sunset date. The sunset clause was invoked "at the very last minute", the buyer said, and they now need to find a home at today's price which is significantly more due to escalating land and building materials prices and labour and supply shortage. The buyer said they "could feel [the developer] were trying to delay [the project] because with the house prices going up, it would be so beneficial for them to cancel our contract".

Overseas in Australia, and back in 2019, the Victoria Parliament passed laws aiming to prevent vendors/developers from relying on sunset clauses in off-the-plan contracts to deliberately delay residential building projects to the detriment of the buyer. The law requires vendors to obtain written consent from a purchaser, or alternatively seek permission from the Supreme Court, to exercise certain rescission rights under a sunset clause in an off-the-plan contract.

Click here for the full New Zealand Herald article.

Bell Gully's projects and real estate team is across the current developments and trends in the industry. If you have an issue related to real estate or construction law that requires attention, we would be happy to assist.

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