

ENSURING YOU MEET DEADLINES UNDER YOUR CONTRACT OR LEASE

Two recent Supreme Court of Queensland decisions act as a reminder to carry out tasks by their contractual deadline, or face serious consequences.

Parties to a conveyancing contract, or indeed any contract, need to be mindful that strict adherence to the contractual terms is essential. Similarly, tenants need to ensure that if they have the option to renew their lease, then they strictly follow the steps to renew.

Simpson & Ors v Jackson [2014] QSC 191

The decision in this case demonstrates the need to be careful that notices under a contract are sent to the correct person by close of business on the due date.

At 4.57pm on the due date for the building and pest inspection condition, the buyer's solicitor sent a notice by fax confirming the buyer's satisfaction with the condition. However instead of sending the notice to the seller or the seller's solicitor, as required under the contract, the notice was sent to the real estate agent.



Under the standard terms of a REIQ contract for sale, a seller is entitled to terminate the contract if they do not receive satisfactory confirmation of the inspection condition from the buyer by 5.00pm on the date due. The seller did just this. At 5.06pm the seller's solicitor faxed a notice to the buyer's solicitor terminating the contract, stating that confirmation of the inspection condition had not been received. The buyer's solicitor then forwarded the confirmation notice to the seller's solicitor, which had incorrectly been sent to the agent.

The sellers maintained that they had validly terminated the contract and refused to sign transfer documents or proceed to settlement. The buyers commenced Court action for specific performance of the contract.

The fact that the buyer's confirmation notice was sent to the agent instead of the seller or their solicitor was not contended. Courts routinely take a literal interpretation to contracts, meaning that if a contract states that a notice is to be sent to a particular person, sending a notice to someone not listed in the contract will not be sufficient. The agent was not listed in the contract as a person who could receive the notice in issue.

The buyers based their argument on a standard clause in the contract that states that if a notice is given after 5.00pm then it will be treated as given on the following business day. This meant that their notice to the buyer's solicitor confirming the inspection condition should be taken to be received on the following business day. The buyers also argued that the standard clause should be interpreted to mean that both the notice from the seller's solicitor terminating the contract, and the notice from the buyer's solicitor confirming the inspection condition should be taken to have been received simultaneously on the following business day.

The Court did not agree with the buyer's interpretation. The Court agreed that both the termination notice and the confirmation notice should be taken to be received on the following business day. The Court did not go so far as to agree that both notices should be taken to be received simultaneously. The contract did not state that notices were to be taken to be received simultaneously or in a different sequence. If the notices



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were taken to be received simultaneously on the following business day then this would lead to further confusion over which notice was effective.

The Court found that the order that the notices were sent was indeed important, and denied the buyer their claim for specific performance. The seller's termination notice was sent first and therefore had priority over the buyer's confirmation notice.

This decision meant that the seller validly terminated the contract because they did not receive confirmation of the condition from the buyer by the date, and time, it was due.

There are some important notes to take away from this decision:

- A standard condition in Queensland REIQ contracts is that time is to be of the essence of a contract. This means that when something is due to be done then it must be done by the due date, otherwise the party is in breach of the contract and the other party may have a right under the contract to terminate.
- Follow a literal interpretation of contractual terms. Just because you believe that things should be implied into the terms of a contract does not mean that a Court will take the same view and accept your creative approach. This is especially so when you are using a standard form contract such as those published by the REIQ.
- Do not leave things to the last minute! And always double check who you are meant to send notices to. If the buyer's solicitor had discovered their error in enough time to then correctly send the confirmation notice to the seller before 5.00pm, then the seller would not have had the right to terminate the contract.
- Keep records of everything. The parties in this situation based their arguments on facsimile transaction records which showed the exact times that notices were received by the other parties.



JV Pub Group Pty Ltd v Red Carpet Real Estate Pty Ltd & Ors [2014] QSC 232

Justice Mullins' ruling shows that lessees must take the initiative to renew their lease by following the procedure set out within their lease, and not rely on reminders by a lessor, even if the landlord has an obligation to remind the tenant.

In this case the terms of the lease required the tenant to provide no more than 9 months and no less than 6 months notice of their intention to renew their lease. The tenant missed this window.

The landlord, following section 46 of the *Retail Shop Leases Act 1994 (Qld)*, issued a reminder notice that the lease was due to expire. The landlord's notice was itself outside of the timeframe under the Act, which required a notice to be issued at least 2 months but not longer than 6 months before the option date.

In reply to the landlord's notice, the tenant exercised their option. A dispute then arose between the parties towards rent. The landlord wanted the rent to be the same as the previous year, but the tenant requested a market rent review in accordance with the terms of the lease.

The landlord proceeded to advise the tenant that:

1. the tenant's notice to the landlord exercising their option was out of time;
2. the tenant had rejected the landlord's offer for a new lease;
3. the current lease would expire when its term expired; and then
4. the tenant would be on a month to month tenancy.

The Court held that the tenant had in fact missed their window to exercise their option. However, the landlord's letter of reminder acted as an invitation to enter into a new lease on the same terms as the existing lease. It did not matter that the landlord's letter was outside of the timeframe under the Act (there are no civil consequences for this under the Act, although there is a possible penalty of \$6,800). By accepting the landlord's offer, the parties entered into an agreement for a new lease, and the rent would be determined in accordance with the provisions of the existing lease in regard to market rent review.

The important notes that should be taken from this decision are:

- Exercise your option on time.
- Both tenants and landlords must keep an eye on and be vigilant about checking the time limits under leases and the Act.
- When you are exercising your option, do not rely on the landlord's obligation to send you a notice about an upcoming renewal.
- If you forget to exercise your option, and your landlord throws you a lifeline, then take it!