



STRICT COMPLIANCE AND THE EXERCISE OF OPTIONS

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A recent Court of Appeal decision has highlighted the need for careful drafting of agreements to anticipate changes to legislative requirements and industry standard contracts (*JLF Corporation Pty Ltd v Matos* [2016] QCA 355).

This decision also confirmed that option agreements, when viewed within their commercial context, must be exercised with strict compliance of the terms or else run the risk of adverse consequences.

THE OPTION AGREEMENT

A put option agreement (“**Agreement**”) was entered into between the parties in connection with a contract made in December 2011 by which Matos purchased a house and land from JLF Corporation Pty Ltd as an investment property. The Agreement allowed the option for Matos to sell the property back to JLF Corporation Pty Ltd using a contract defined in the Agreement schedule as the eighth edition of the REIQ/Qld Law Society standard form of contract for houses and residential land.

When the option was exercised in December 2014, the tenth edition of the standard form of contract had superseded the eighth edition, which was subsequently executed in place of the eighth edition.

The use of the tenth edition was contested in the Queensland Supreme Court where it was determined that the eighth edition of the standard form contract was not a

mandatory requirement of the Agreement in its commercial context.

THE DECISION

This determination was appealed to the Court of Appeal where the terms and construction of the Agreement were heavily scrutinised.

The Court of Appeal held that the use of the eighth edition of the REIQ/Qld Law Society standard form of contract for houses and residential land was an essential requirement of the exercise of the put option for the following reasons:

- contrary to opinion of the primary judge, the purchase of the property was indeed a commercial transaction and as such demonstrated an unequivocal intention from both parties of strict compliance with the terms of the Agreement;
- the tenth edition of the standard form contract contained several additional terms that were absent in the eighth edition, the significance of which could not be classed as commercially insubstantial; and
- the Agreement expressed in clear and unambiguous language exactly how the option was to be exercised which could not be overlooked.

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As this essential requirement of the Agreement was not complied with strictly, the improper exercise of the Agreement invalidated the resulting contract.

COMMERCIAL SIGNIFICANCE

The decision of the Court of Appeal has significant flow on effects to commercial transactions of a similar nature.

Parties entering into smaller transactions must ensure that their option agreements are drafted to:

- anticipate changes to standard for contracts over time; and
- clearly define the form of contract that is permitted by the option agreement.

Parties must also take great care to ensure that the terms

of an option agreement are strictly complied with when exercising their option, so as to preserve the integrity of the resulting contract.

ClarkeKann Lawyers can assist with the drafting of option agreements or contracts, as well as provide general advice to any of your property related queries.

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