

Autumn 2008

The New Property Law Act

On 1 January 2008 the Property Law Act 2007 came into force, replacing the 1952 Property Law Act and other legislation, dating back as far as 1257.

The Act is to create modern, more user-friendly legislation for people buying, selling or mortgaging their property or entering into commercial leases of land.

The following highlights some of the changes that have been introduced.

Landlord's Consent

If a tenant asks a landlord for permission to transfer or sublease premises to a third party, or to change the permitted use of the premises, the landlord must not unreasonably withhold consent and the landlord must respond in writing within a reasonable time. If consent is given subject to conditions or is withheld, the landlord must give written reasons for the decision, if asked to do so by the tenant.

Various affected parties may claim damages from a landlord if they suffer loss as a result of the unreasonable delay or withholding of the landlord's consent.

Insurance Protection for Tenants

If the premises are damaged by a risk covered by insurance (e.g. fire, flood, explosion) the landlord and their insurers may not require the tenant to pay for the repairs. This is so even if the damage was caused by the tenant's negligence.

The Disputes Tribunal

Last year Edith, an elderly widow, paid a painting contractor \$7,000 to paint part of her house. After only 12 months the house looked terrible and needed to be repainted. The contractor refused to fix the work and Edith found another more reputable painter who would redo the work for a further \$7,000.

Edith's lawyer advised her that she could sue the first painter in the District Court but that the cost of doing so may be uneconomic. Fortunately for Edith, she can bring a claim in the Disputes Tribunal.

Distrain

The Distress and Replevin Act 1908 previously allowed a landlord to enter the premises and seize items belonging to the tenant, if the rent was in arrears. This self-help remedy has been abolished.

Sale and Purchase - Return of Deposit

A purchaser of land now has a statutory right to apply to a court for the return of the purchaser's deposit. The surrounding circumstances must be such that a court would not order the purchaser to perform the contract and also that the purchaser has no right to cancel the contract. An example could be where there is a defect in the property that the purchaser was not aware of until after signing the contract and paying the deposit.

The court is also given the power to cancel the contract and declare that the purchaser has a lien on the land to secure payment of the refund.

Conclusion

The new Act affects many facets of the law relating to property. Chances are, if you are dealing with land in any way, the new Act will affect what you are doing. With such a major law change, it is more important than ever to obtain proper advice at the outset of any transaction.

Sue Wooldridge 09 407 0174, Graeme McLelland 09 407 0179 or Sarah Jury 09 407 0176 are able to advise you on all aspects of the new Property Law Act.

What Types of Claims are Covered?

The tribunal is very versatile and can hear claims about almost anything, from car repairs to grazing stock, from a faulty new computer to hairdressing for a wedding gone terribly wrong.

There are some limitations. There must be a dispute - you can't file a claim if someone simply refuses to pay a bill. The tribunal is also limited in terms of disputes concerning employment, land sales, wills, rates, taxes, and other statutory amounts.

For most disputes the tribunal is an informal, inexpensive, quick and private way to resolve the disagreement.

A claim involving up to \$7,500 can be filed as of right. If the value is between \$7,500 and \$12,000, both sides must consent for the matter to be heard by the tribunal. The tribunal has no jurisdiction to hear a claim over \$12,000.

Procedure

The tribunal is much more flexible than a District Court. No one is allowed to be represented by a lawyer and the rules provide that the tribunal must decide disputes "according to the substantial merits and justice of the case". In doing so it is not bound by strict legal rights or obligations. This allows a referee to take matters into account that a judge in a District Court may be prevented from considering.

In Edith's case, she may have signed a contract with a clause prohibiting her from claiming compensation more than 6 months after the work was completed.

Room with a View

Introduction

Imagine this, after considering the various housing options you decide you want an apartment in the heart of Auckland city. You want a perfect base close to the action—a long term investment! You spy a brochure which covers the key aspects of your search. The apartments are not built yet but the glossy publication promises classy central city living, and a view. Once you have signed up and the building has been constructed, you walk in and discover that a roof is obstructing your priceless view!

Misrepresentation

The key question for the Court in the case that followed this disappointing discovery by the purchaser was whether the misrepresentation made in the brochure meant that the agreement to purchase could be cancelled. Alternatively, would the Court require the purchaser to pay over the purchase price and buy an asset that did not live up to the initial expectations?

The Agreement and Plans/Specifications

After the "tease" in the original brochure, came the actual agreement for sale and purchase with detailed plans and specifications. These, when taken as a whole, showed the existence of the roof in front, and fully disclosed the exact situation. The agreement included the standard provision that once signed, the agreement was the binding and complete legal arrangement between the vendor and purchaser.

The referee is not bound by that provision and may award her \$7,000, if that seems to be fair and just.

Preparation is the Key

Probably the single most important aspect of bringing (or defending) a claim in the tribunal is preparation. Make sure that you have copies of any important documents, such as bills, receipts, photographs or reports. Ensure that any important witnesses can attend. If they cannot do so in person they may be able to attend by telephone and support a written summary of what they saw or know. Review each step of your claim (or defence) thoroughly before the hearing so that you can anticipate any challenge that the other party might make and anticipate any concerns that the referee may have. If you prepare your claim carefully and thoroughly, it can be an excellent forum to resolve a dispute of up to \$12,000.

For further information call **Sarah Jury 09 407 0176** or **Katharine Taurau 09 407 0173**

In other words, the brochure was not to be taken into account when finally deciding what the terms of the contract were. As the purchaser had the opportunity to take any legal or other advice available prior to signing, there was no reason, in the Court's view, why the contract should not stand.

Conclusion and Warning

In the excitement of the purchase, who would have given a thought to the roof next door, particularly as nothing was constructed at the date of signing. In hindsight, the warning is clear and the principle applies to every signed sale and purchase agreement. Before you sign, obtain all the advice you can, because prior representations will usually not be a relevant factor. In this instance, not only legal advice was required, but specific architectural advice regarding the plans and specifications was also needed.

McLeods Lawyers strongly recommend that you take advice from either Sue Wooldridge 09 407 0174, Graeme McLelland 09 407 0179, Sarah Jury 09 407 0176 or Katharine Taurau 09 407 0173 before signing any agreement for sale.

Arrivals and Departures

We are pleased to welcome Katherine Baker who has joined us on reception to replace Hannah Marley who has moved to Wellington.