



When in doubt, ask your solicitor: Evans v Jan

Evans v Jan [2025] QSC 31 (*Evans v Jan*)

Introduction

The recent case of *Evans v Jan* provides an important reminder to get confirmation directly from solicitors and not rely on agents. Individuals should maintain consistent communication with their solicitor and raise any concerns with them throughout the property transaction process.

Stephen Evans (**purchaser**) was the purchaser of a residential property in Queensland for \$985,000.

Yea Lan Jan (**vendor**) was the vendor of that property.

Summary

A contract for the sale of property was exchanged by Evans and Jan on 23 January 2024. The contract required the purchaser to pay a 10% deposit (namely \$98,500) to the agent’s trust account immediately on exchange and the timing of the payment of the deposit was an “essential term” of the contract.

Due to a daily transaction limit with the purchaser’s bank, the purchaser was unable to meet the payment requirement. The purchaser eventually paid the full deposit, but it was made in instalments over the next two days because the real estate agent advised the purchaser by text message that the timing of these payments was acceptable to the vendor.

The evidence before the court was that the vendor had not given the real estate agent any such instructions and was unaware of the real estate agent's conduct.

Even though the vendor received the full \$98,500 deposit, the vendor later terminated the contract in view of the deposit not having been paid in accordance with an essential term of the contract (being the payment of the deposit within a specified period).

At the Queensland Supreme Court, the purchaser sought an order for specific performance on the basis that the deposit had been paid in accordance with instructions that could be attributed to the vendor via the conduct of the agent.

The key issue was whether the agent had (the actual or ostensible) authority to permit late payment of the deposit.

Court's findings and commentaries

Whether a Principal is bound by their agent's actions (in this case a real estate agent) depends on the degree of authority that is granted to them by the Principal. That is, it depends on the Principal's actions (or omissions), not those of the agent.

In determining whether the agent had (the actual or ostensible) authority to permit late payment of the deposit, the Court found that the vendor's conduct did not confirm, nor even suggest, that the vendor had given the real estate agent authority to agree to late payment of the deposit.

The case turned on the fact that the vendor did not give permission to the agent, nor was the vendor aware of the real estate agent's conduct in authorising the payment of the deposit on terms that departed from the contract for sale. The result may have been different had the purchaser sought confirmation from the vendor directly (or their solicitor) that the modified payment regime was acceptable.

As such, the vendor was entitled to terminate the contract and keep the whole of the deposit

Takeaway

The key takeaway for purchasers is that any representations made by a selling agent should not be relied upon without further confirmation from the vendor. If there is any conflict between the representation of a real estate agent and the contract, that should be confirmed in writing with the other party's solicitor. Otherwise, there is a risk that the contract could be terminated and the deposit forfeit.

More information

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