



Can you terminate for your own breach?

Case Note: Alamo Holdings Pty Ltd v Reece Australia Pty Ltd [2025] NSWSC 946

Executive Summary

In *Alamo Holdings Pty Ltd v Reece Australia Pty Ltd* [2025] NSWSC 946, the Supreme Court of New South Wales reaffirmed the principle that a party cannot terminate a Lease by relying on its own breach. This decision extends to all types of contracts.

Facts

Alamo Holdings Pty Ltd (**Alamo**) leased a commercial premises to Reece Australia Pty Ltd (**Reece**).

Article 29(9) provided that either party could terminate if an occupation certificate was not obtained within a 6-month period, "subject to the Lessor complying with Article 29(5)" (i.e., performing base-building compliance works).

Reece had engaged Novatec Design Pty Ltd to prepare and manage its Development Application (DA). NovaTec further engaged BW&A to provide a BCA compliance report.

A DA was lodged but failed to provide a BCA compliance report assessing the existing building's compliance with the BCA, as required by the council.

The council issued multiple requests for information subsequent to the BCA reports, which were not responded to within the deadline, including but not limited to:

- Not undertaking the required clause-by-clause BCA assessment
- Incorrectly assessed construction type
- Failed to give the necessary design advice and;
- Improperly marked sections as not applicable to fit out works

The development consent was consequently delayed and could not be obtained in time for Reece to complete the necessary works. An occupation certificate was unable to be obtained by the deadline of 23 June 2023 specified

in the Lease.

Reece sought to rely on Article 29(9) of the Lease in an attempt to terminate the Lease on the basis that the OC was not obtained by the deadline.

Alamdo brought a claim against Reece, disputing Reece's termination of the Lease And arguing that Reece could not rely on Article 29(9) in circumstances where Reece's own default caused the delay in obtaining the occupation certificate.

Reece cross-claimed, seeking the return of its bank guarantee which was provided by Reece as security for the performance of its obligations under the Lease.

Issues to be Determined

The court was asked to determine the following questions:

- How did the construction of Article 29 affect the termination right in Article 29(9) to be exercised?
- Did Reece breach its obligations under the Lease? If so, did the breach cause the occupation certificate to be delayed?
- Did Reece validly terminate the Lease through reliance on Article 29(9)?

Supreme Court Decision

Alamdo succeeded in its claim against Reece and is entitled to a declaration that the Lease remains on foot, and a judgement in the amount of the unpaid rent and outgoing with interest added.

Reece's cross-claim was dismissed.

Legal Reasoning

The termination right conferred by Article 29(9) to either party is interpreted against the principle that a party's own breach cannot be used to their advantage for termination. Reece's material contribution in the failure to obtain the occupation certificate dismisses its right to employ article 29(9) for purposes of termination.

Among other cases, the Court referred to the test in *Joseph Street Pty Ltd & Ors v Tan & Ors* (2012) 38 VR 241, citing *Mordue*, as follows:

"It is well established that a party wishing to rescind cannot take advantage of its own ineffective or inefficient measures to comply with its contractual obligations, and that where a vendor's default has deprived the purchaser of a 'substantial chance' that the condition would have been fulfilled, the vendor cannot exercise the right of rescission."

Reece's performance in responding to council's requests was deficient and breached its obligations under Article 29(5), thereby affecting its ability to invoke the termination right under the Lease.

Key Takeaways

The Court confirmed that a party is not entitled to exercise the right of termination by relying on their own breach.

Reinforcements that contractual termination rights tied to deadlines will be upheld, which may be lost on account of contributory defaults. Before exercising a termination right, parties should consider whether their own actions have contributed to a termination pre-condition.

Council requests for information requiring strict BCA compliance can significantly affect leasing timelines.

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