

# Termination of contract for failure to comply with condition

By Paolo Testi, Lawyer (February 2017)

A recent Queensland case illustrates the importance of meeting due dates for satisfying contractual conditions.

In *International Palace Pty Ltd v Novaheat Pty Ltd* [2016] QSC 75, two parties entered into a standard form contract to sell vacant industrial land (Contract). The Contract was 'subject to and conditional upon due diligence period to be satisfied on or before 27 July 2015' (**End Date**). It also required the buyer to pay part of the deposit 'on acceptance of due diligence'. Provisions like this are usually included to allow the buyer to terminate if they are unsatisfied with their due diligence enquiries.

The buyer failed to notify the seller (by 5pm on the End Date) that the buyer was satisfied with its due diligence enquiries. Just after 5pm on the End Date, the seller terminated the Contract for the buyer's failure to comply with a contractual term or condition.

On 29 July 2015, the buyer notified the seller that the buyer was satisfied with its due diligence enquiries - on 30 July 2015 the buyer paid the remaining deposit. The buyer argued that the seller's termination was invalid as the buyer had a continuing right to waive the benefit of the due diligence condition.

The Court accepted the seller's argument that the Contract required the buyer to (by the End Date) either confirm that the due diligence condition was satisfied/waived or terminate the Contract for failure of the condition. As the buyer failed to do either of these things, either party was entitled to avoid the Contract after the End Date. The fact that the condition was for the buyer's benefit did not affect the seller's right to terminate.

## Lesson to be learnt

This case is an important reminder to:

- 1 be aware of and comply with all time conditions attaching to contracts; and
- 2 ensure that contractual conditions sufficiently detail the parties' intentions and obligations and the consequences of a condition failing.

## How can I find out more?

At IRDI Legal, our experienced and specialised **Property Team** can assist you with any contractual and other property questions. Please contact us to find out more.

*Note: The content of this document is not legal advice and only provides general information about the law.*