

**IT'S
OUR
SHOUT**



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The Virtual **Truth**

G20 turmoil head- ing to Brisbane

Children strip searched, revellers detained

Climate change and indigenous activists will likely take top billing among those making their point on the world stage when the 9th G20 leaders' summit convenes in Brisbane on 15 and 16 November.

To counter the risk to personal and property safety posed by "civil disobedience", special legislation has been enacted to give every Australian and New Zealand police officer (plus other "appointed persons") extraordinary powers of search and arrest and to enter homes without warrant from 16 September, when finance ministers meet in Cairns, to 17 November.

Queensland's *G20 (Safety and Security) Act* declares three categories of special security areas.

Within Brisbane's "declared area" covering South Bank and stretching to Kelvin Grove, Bowen Hills, Fortitude Valley and Woolloongabba,

police will be able to arrest and detain anyone for up to three days with a presumption against bail, on suspicion of intent to "disrupt" an event from 11 November.

People living or working in any of the 10 "restricted areas" - where 4,000 delegates and 3,000 media representatives will congregate - require prior accreditation to stay put. These areas include the Brisbane Convention & Exhibition Centre itself (from 10 November) and around major hotels (from 12 November).

Those who do not pass criminal history checks will be "excluded" even from their own residence. Public entry to these zones is prohibited during the period.

Any "senior police officer" may also declare any road or waterway - including the Brisbane River or the canals at Sanctuary Cove - to be a "motorcade zone", in which the "restricted zone" rules also



apply. Frisk searches will be routinely conducted without any reason required - in any of the declared zones. Forcible strip searches are also permitted - even for children - the

only safe guard being it must be conducted by an officer of the same gender as the suspect and a support person must be present for a child search.

Hotels around which the no-go "restricted zones" have

been mapped are Stamford Plaza, the Marriott (both Barack Obama options), Royal on the Park, the Treasury, the Sofitel, the Novotel (Spring Hill), the Pullman,

continued to page 19 »

How much loyalty can you expect from your lawyer?



Court's ruling permits lawyers to act against former clients

How much allegiance can clients expect from their lawyer after their job is complete? That question was put to rest in April by three appeal judges considering the case of a regional solicitor representing an opposite party in a lawsuit against former clients, husband and wife home buyers.

Merimbula solicitor Hugo White had conducted the conveyance of a home-site for Eugene and Inge Maxwell-Smith in 1995.

They subsequently re- continued to page 19 »

Rights gap elephant may breed "Recognition" pup



Editorial: p 8

Secret Diary of a Call Girl heroine, Billie Piper

High stakes Gold Coast
bordello drama,
p7



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WHERE EXPERIENCE COUNTS

Dispossessed borrower sues judge for “contempt”

Even as Queensland’s residential real estate market claws itself back to some respectability, the desperation of property owners still reeling from the GFC property collapse reached its apogee in April, with a contempt application brought against the judge who allowed the mortgagee to recover possession of a Sunshine Coast property.

Judge John Robertson ordered in March, that Perpetual’s July 2013 possession and debt recovery action be resolved in its favour and that the borrower pay the loan debt of \$217k inclusive of interest.

Dispossessed borrower, Wayne Ralph Riggall, lodged a further application in the Maroochydore District Court to compel Robertson to appear – armed with his “Bond” and oath of office – to show cause

in answer to the contempt allegations and answer “why a Tort Claim should not issue against his Bond to Purge the Contempt”.

What had been an issue in the March hearing was the validity of a so-called “promissory note” sent to Perpetual by the borrower from Mapleton Post Office so as to allegedly discharge the mortgage debt in full.

Fuelled apparently by internet gobbledegook propagated in the United States, this is at least the third instance of a similar argument coming before a state court in recent months and ranks with other equally creative contentions placed before the Court of Appeal last year (see related report on page 13).

The imaginative borrowers argue a home-made “promissory note” – not drawn on any bank – dis-

charges the loan repayment obligation with a commitment to pay under the “negotiable instrument”.

In an “affidavit of probable cause”, his representative Sarah Ann Wales – who the judgment explains is not a lawyer – recounts her bar table stoush with Robertson when she accused him as being “not qualified to assess a negotiable instrument”.

She then claimed on Riggall’s behalf that by failing to specify the exact deficiencies in the instrument, Robertson had denied the borrower an opportunity to tender a modified “bill of exchange.”

Judge Long in April, ruled the “astounding” application and supporting material to be an abuse of process.

To proceed against a judge personally demonstrated, he said, “a lack of understanding” of the funda-



Ready for judgment. Should at least these judges be able to be sued?

mentals of the justice system, he said. None of the relief claimed was available at law.

Explaining that the only further course open to the

borrower was an appeal against the March ruling, His Honour ordered the registrar should refuse allow the application to be filed.

On 1 May, an enforcement warrant was issued against the property.



Kebab shop - a tough business at the best of times

A Gold Coast retail tenant has recovered compensation for wrongful termination of a lease just six weeks after commencement as a result of a

landlord’s “deliberate and persistent” demands for inspections, “at times and frequencies which would not be considered reasonable.”

Kebab tenant “persecuted”

Tenant wins compo on excessive inspection demands

Bruno’s Delights entered into the Johnston Street Southport lease with George Alexiadis on 15 June 2012.

By 27 July, “harassment” and “demands for rent when no rent was due” constituted, according to the QCAT review tribunal, were edging into the “persecution and intimidation” category.

Alexiadis entered the premises in the early hours of that morning, took items from the freezer and placed

them in a tub of ice outside the premises for the tenant to retrieve and changed the locks. All of this was done without serving any notice to remedy breach of covenant.

The landlord’s dissatisfaction apparently related to the cleanliness issues but there was no photographic evidence nor did he make any complaint to the council health department “which would appear to be the nor-

mal course of action in a case like this.”

Brunos’ claimed \$21k for money throwaway in entering the lease and loss of value of fixtures, fittings – which the tenant was prevented from removing – and stock.

The tribunal was of the view that the landlord’s conduct to drive the tenant out of possession should result in compensation for the tenant. Requests for inspec-

tions although permitted on reasonable terms, must not breach a “tenant’s right to quiet enjoyment” of the leased premises.

It invoked s43 of the Retail Shop Leases Act to require the payment of compensation for loss or damage suffered by lessee because “a lessor causes it to vacate before the end of a lease”.

The landlord was ordered to pay the total of \$21k within 14 days.

Fatal traffic incident, Maroochydore, May 16

Around midday, a car travelling on Second Ave collided with a parked car before seriously injuring a male pedestrian and killing a female. The 76 yr-old driver and male pedestrian were transported to Nambour Hospital for treatment. The female pedestrian died at the scene.

Serious traffic crash, Broadbeach, May 22

At around 5pm a vehicle travelling north along Old Burrell Rd slowed to turn into a driveway. As the vehicle began to make the turn it collided with a motorcycle that was travelling south. The rider, a 55 yr-old man, was transported to the Gold Coast University Hospital with life-threatening injuries.

Fatal traffic crash, east of Quilpie, May 23

A 33 yr-old man, 24 yr-old woman and an eight month old boy have died after a sedan and utility collided on the Diamantina Development Rd, about 60 kms east of Quilpie. The driver and sole occupant of the other vehicle, a 57 yr-old man sustained minor injuries.

Fatal traffic crash, Bundaberg, May 24

At around 3.20pm a car travelling on Heidkes Rd at Windermere left the roadway and crashed into a power pole. The sole occupant of the car, a 17 yr-old woman was ambulated to Bundaberg Hospital, then transferred to the Royal Brisbane and Women’s Hospital where she later died.

Traffic incident, Noosa, May 26

At approximately 3pm a female driver collided with two male pedestrians on Noosa Pde. The female driver and one of the male pedestrians were taken to Nambour Hospital with non-life-threatening injuries. The second male pedestrian was airlifted to hospital with serious leg injuries.

Fatal traffic crash, Maroodan, May 27

A 28 yr-old man has died following a collision with an oncoming vehicle on Bundaberg Gin Gin Rd at around 4.10pm. The driver of the other vehicle, a 19 yr-old male was airlifted to Bundaberg Hospital with serious injuries.

my sweetopia

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Investor fend off bank writ

BOQ beaten on "sexual debt" defence

A Sarina real estate agent has succeeded in holding the Bank of Queensland at bay and defeated its summary judgment application to recover \$5.5 mil under a personal guarantee by alleging a breach by the bank of the Code of Banking Practice.

BOQ succeeded against Paul Wright but his agent wife Faye, was deemed to have a potential defence in recognition that women can become involved in financial guarantees only because of a personal relationship with the borrower.

She, ruled the Chief Justice of Queensland's Supreme Court, was entitled to argue a special equity defence available in some circumstances to mitigate against so called 'sexually transmitted debt'.

Likely to be argued on her behalf at trial is that, had BOQ allowed a full day between presentation of the security documents and re-

quiring them to be signed – as specified in cl 31.5 of Code of Banking Practice – the guarantee may not have been given.

In doing so she will need to overcome what the court described as a "fundamental weakness of such a defence" given that she is a shareholder with her husband in the borrower company and had been involved in a series of similar earlier transactions.

Regardless that the defence may not, in the end, prove "particularly promising for her", Mrs Wright's argument is an important one. The issue of "relationship debt" aris-

ing under wives' guarantees for businessman husbands, was first ruled on by the NSW Supreme Court in 1996.

Notwithstanding the property security was sufficient to meet claim and interest, the court required that she nevertheless pay \$200,000 into court to the credit of the proceeding, representing the interest due in the four months leading up to the trial.

"I regard the second defendant's right to run the defence should come at a price," said His Honour.

Faye Wright's contest will likely come to trial in August.



Sexually acquired debt: Of all serious quarrels between couples, 70% relate to finance

Cruise Ship Incident Log

22 June 2014. MS Britannia, Nicko Tours, Holland

A river cruise ship in the eastern Netherlands carrying 154 passengers and 40 crew members was evacuated after springing a leak. Dutch emergency services had to furiously pump out the water to prevent the boat from sinking. The multi-deck cruise ship was on the IJssel River, 110 kilometres east of the capital, Amsterdam, on its way to Cologne, Germany, when it ran into trouble. The cause of leak is still unknown and no one was injured as a result.



18 June 2014. Divina, MSC Cruises, Brazil

An intoxicated Mexican passenger went overboard from the ship while it was cruising between Fortaleza and Recife. The man was seen plunging 50 meters into the sea from the 15th deck of the MSC Divina. The vessel remained in the area until Brazilian navy boats arrived and took over the rescue effort. The cruise was transporting 3,500 fans between world cup venues.



7 June 2014. Carnival Valor, Crystal Cruises, Greece

While Carnival Valor was berthed at Porte Zante a

sexual assault was perpetrated against one of the cruise passengers by one of the vessel's crew members. The vessel left port later than scheduled while the local police took the crew member into custody.



30 May 2014, Navigator of the Seas, Royal Caribbean, Caribbean Sea

Two American men were arrested and put into custody while aboard the Navigator of the Seas. The men were accused of raping a female passenger with whom they had spent the previous night, 50 miles outside of Jamaican waters. The ship docked at Galveston where the accused were processed.



28 May 2014. Independence of the Seas, Royal Caribbean, France

A 6 year old boy was rushed to hospital after being found unconscious in the vessel's swimming pool. The child's heart had stopped before one of the ships doctors performed CPR and he was transferred to hospital by helicopter.



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P.A. Hospital location upgrade



Our Woolloongabba office is located immediately opposite the main Ipswich Rd entrance to Queensland's largest trauma hospital, under the pedestrian overpass on Ipswich Rd.

As well as servicing hospital patients and staff - it has 780 beds and 5800 staff - it is a convenient location for clients situated in the nearby Moorooka, South Brisbane, Annerley, Stones Corner, Co-

orparoo, Camp Hill, East Brisbane, West End and Salisbury neighbourhoods.

An upgrade to the exterior of the premises is expected to be completed by September.



Cormack Hankinson
socialjournalism.com.au/author/cormack-hankinson/

Backer bitten in crowd sourcing deal

Brisbane law student Ryan Purcell says he "feels ripped-off" and is amongst hundreds of spurned investors furious over contractual obligations failing to be met by online crowd sourcing giant Kickstarter.

Purcell pledged \$80 to a pair of entrepreneurs hosted by Kickstarter on the guarantee that by July 2013 his pledge would be reciprocated in the form of a prototype bracelet which syncs to your smart phone and changes col-

The Terms of Use continue to say that the contract between pledger and project developer can only be discharged once the developer has either given each of the Backers a reward by a specified date or refunded their pledge.

The pledges themselves are only debited from the pledger's accounts once the total amounts the developers have requested to fund their projects have been raised.

It is this seeming secu-

accounting for the legal costs and time and effort spent, pursuing litigation is simply out of the question.

In the past there have been examples where more wealthy pledgers have instituted legal proceedings.

One such example occurred in the US on May 1 of this year where Washington State Attorney-General Bob Ferguson filed proceedings against Edward Polchlopek who resiled on his promise to reward his 810 Kick-

4,474 backers
\$264,527 pledged of \$80,000 goal
0 seconds to go

Project by Paul & Rudy, Seattle, WA
2 created · 3 backed
Rudi Beijnen 147 friends

Ryan Purcell invested \$80 for development of the Embrace + wristband, but is yet to see return

our, according to notifications. "Maybe it's a breach of their contract so that theoretically, I could sue. But its just not worth my time and effort," he said.

Kickstarter's Terms of Use expressly create a binding contract between people like Purcell and the entrepreneurs they fund.

Naturally Kickstarter have indemnified themselves against any harm or loss arising from the transactions between its users.

ity which has facilitated over \$1.1 billion in pledges since Kickstarter's launch in 2009.

Unfortunately Backers are finding out the hard way that although the developers may raise the funds they need through public support, there is no guarantee that the amount will be enough or even that it will go towards the project, a reality which has left many high and dry.

Indeed an action in breach of contract may arise on the facts but realistically

starter Backers with a deck of horror themed playing cards.

Mr. Ferguson sought \$2000 in restitution per each burned Backer but could only represent 31 claimants from his own jurisdiction.

If you ask this reporter one thing is for certain: crowd sourcing is not without risk. Due diligence requirements are the same for this novel and appealing platform as they are for any financial venture.

We tell it like it is



for different localities. The content is the same for each edition - the only difference being the advertisements that are supplied by our supporters for that area.

The print version is also converted to a flipbook format as The Virtual Truth and made available to subscribers (for a free subscription head to <http://www.cartercapner.com.au/news/thetruth/>) in virtual mobile and desktop format. The Virtual Truth carries additional "funnier, punchier and uncensored" content.

We are also growing Truth TV, as a grab of some of the blog highlights and presenting it as a monthly YouTube video.

So that's our news cycle!

How do we find all the interesting stories for Qld News Truth?

Every single item is original content and based on

actual events we discover by looking further than others.

Many stories are published first in our Truth blog. From there, we compile and print in the newspaper format you are reading now.

The print version is circulated in a number of editions

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Sunday: Closed

Would Boeing's GoldCare have helped MH-370?

Expert re-analysis of satellite data from London based satellite operator Inmarsat by the Australian Transport Safety Bureau, has confidently "pinpointed" the "highest probability" resting place for Malaysian Airlines' missing B777 as the same 60,000 sq km location originally searched in the two weeks following its disappearance on March 8.

The trail from the west coast of Sumatra to that point is premised on the satellite receipt of hourly "hand-shake" pings analysed for their "Doppler" effect and reconciled with groundspeed predictions from standard operating data.



Flight MH370 carrying 239 people, is now believed to have been set on auto-pilot – possibly at very high altitude – to intentionally crash into the southern Indian Ocean after fuel exhaustion.

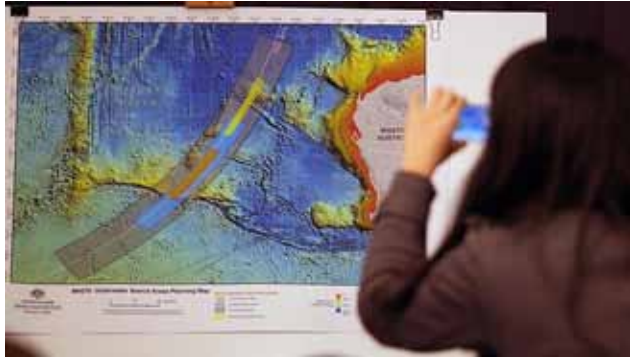
Captain Zaharie Shah is the chief suspect on the strength only that the repositioning of the aircraft could only have been accomplished by someone in the cockpit; his political views; nil forward social events planned; and a sophisticated flight simulator at his home.

Other reports suggest that MH370 was filled prior to departure with almost twice as much jet fuel required for the planned flight to Beijing.

The only thing for certain is that the truth won't be known until the aircraft is found and data from the flight recorder and cockpit voice recorder, recovered.

The new area – around 1,800 km west of Perth – is the same as that previously searched by air with 10 aircraft operating around the clock for two weeks.

Mini-submarines – as previously used to the north where 'pings' were mistakenly believed to have come from the plane's black box – and other under-sea apparatus, will



New search area same as the first

be deployed in August when mapping of the "new" area is completed.

The ATSB's Martin Dolan explained that MH370's "highest probability flight path" was a straight course such as one flown by an aircraft on auto-pilot.

"It's generally expected that if the autopilot is operational that's a result of it being made operational," he said.

There are many "if onlys" that make up this tragedy. The 25 min delay in registering no comms from the aircraft; the four-hour delay in activating a SAR phase; Australia's Jabiru over-the-horizon radar being pointed elsewhere, being some among them.

Chief though, is that the

B777 itself wasn't benefited with Boeing's in-flight monitoring option.

GoldCare is promoted by Boeing as a "flexible set of support services for operational efficiency" that integrates "advanced technologies for fleetwide real-time data" monitoring 24x7. It transmits detected problems to maintenance personnel at Boeing's worldwide headquarters in Seattle. "By monitoring the airplane in real time, GoldCare can proactively anticipate problems," the manufacturer says.

Originally developed for its 787 series aircraft, it is due to be extended to airlines' 777 and 737 fleets, if they are prepared to pay for the service.

Monthly cycling giveaway

To celebrate Carter Capner Law's 70th anniversary and the launch of its new colours, CCL is giving away two GBP £20.00 and one GBP £50.00 Wiggle gift voucher every month to members of the Strava "CCL Cycling" club as follows. Entrants must:

1. Be a member of the "CCL Cycling" club on Strava; and
2. Like us on facebook.com/carcaplaw; and
3. Subscribe to youtube.com/user/CarterCapnerLaw; and
4. Join Strava's Monthly Training Series ("MTS") Challenge for the relevant month; and
5. Cycle at least 200km in Queensland for the relevant MTS Challenge as a CCL Cycling member.

Each month, each entrant who satisfies the above criteria, will go into the draw to win one of three Wiggle gift vouchers (valid for 12 months) valued at GBP £20.00.

In addition, the entrant who satisfies the above criteria (1 to 5) and who also cycles the most kms for the relevant Strava MTS Challenge, will win a Wiggle gift voucher (valid for 12 months) valued at GBP £50.00

May Winners:

- Lance Rathbone (random draw)
- Tom Wearer (random draw)
- Beej Anthony (most kms)

June Winners:

- Jayden Locke (random draw)
- Martin Tame (random draw)
- Gemma Brown (most kms)



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Please give brief details of your friend's legal query:

The tourist's A-Z guide

Queensland's laws & legal traps



■ Identity card

Australia does not have any form of national identity card. Drivers' licences, or for visitors passports, are considered an acceptable form of identification.

■ Immigration & Visas

Entry into Australia is regulated at a federal level. Visa extension and change enquiries should be directed to the Department of Immigration & Border Protection. Consult the terms of your visa to determine the extent, if any, you are permitted to undertake work.

■ Income Tax

Employers deduct income tax from employees and pay it to the Australian Taxation Office (ATO). Wage earners must lodge tax returns (specifying income

etc) annually after 30 June. The form can be lodged earlier if you have ceased work. If the total income earned in the relevant fiscal year (1 July to 30 June) is less than the tax-free threshold (\$18,200 for y/e 30/06/15), pre-paid income tax can be claimed back as a refund. Income derived from investments is taxable but the expenses associated with the investment, including interest on capital borrowings, is an allowable deduction.

■ Indigenous Australians

Indigenous Australians as a group have one of the lowest standards of education, health and housing and one of the lowest life expectancies of all developed nations. Australia has never adopted Affirmative Action in

any field, in any state or federally. Indigenous tribal groups may assert "traditional owner" rights over land only if it has not previously been taken away (by government). In practice such rights are only applicable in very remote areas. Traditional owner rights do not constitute "ownership" but allow the collection of "royalties" for activities such as mining. In some states but not Queensland, criminal courts may take notice of traditional indigenous law when considering guilt and penalty.

■ Insurance

The Insurance for cars, homes and possessions is widely available at competitive rates. Accident and disability insurance can also be purchased. Travel Insurance

usually only covers expenses relating to insured losses, incurred overseas before returning home. All insurance applications require good faith disclosure – on the insurance application – of all circumstances that might be considered relevant to an insurer deciding if it will accept the insurance risk. Failure to do so means they can deny a claim. Insurers who deny or restrict claims can be challenged in a court.

■ Legal system

Australia inherited the English "common law" legal system which is the articulation in law of the expectations of the community. Our judicial system is "adversarial" where a judge decides the issue, based upon the evidence and argument pre-

sented by opposing parties. The law of "negligence" holds people accountable for the reasonably foreseeable losses caused from a failure to "take reasonable care" in respect of those foreseeably affected by acts or omissions. In recent years governments have restricted or eliminated many individual common law rights for example, to keep insurance premiums low for businesses. Juries are prohibited in most civil legal cases.

■ Media

Until recently, Australian law prohibited the same corporation owning print media and television stations in the same location. Australian print media ownership is highly concentrated. Apart from major daily newspapers in Sydney (Fairfax), Melbourne (Fairfax) and Perth nearly all other newspapers are owned by Rupert Murdoch's News Corporation, the owner of the New York Post and the Sun (UK). News Corporation outlets are considered right-of-centre and frequently editorialise against the differing perspective taken by Fairfax media and the federally funded state broadcaster, the ABC.



■ Medical services

State (public) hospitals provide free medical treatment to residents. These hospitals also provide free emergency treatment to tourists but may recoup their charges in some circumstances. Australian residents also receive subsidised medical treatment from General Practice doctors, through Medicare. Some General Practice doctors "bulk bill", so there is nil charge to the patient. A \$7 "co-payment" is however proposed for all bulk bill consultations from July 2015. Private hospital care can be financed via insurance through a range of private insurers and is not covered by Medicare.

continued next month

Spending to hit \$13 billion

China leads tourism revival

Figures released by Tourism Australia suggest that annual spending by Chinese visitors to Australia could rise by \$13 billion by 2020.

China is Australia's fastest growing and most valuable inbound tourist market, with 709,300 visitor arrivals in 2013.

HSBC Economist, Paul Bloxham said, "If Australia continues to attract its current share of these visitors and traditional tourism markets grow at average rates, China will account for

21 percent of total visitors by 2020."

"This will see China overtake New Zealand as Australia's largest source of tourists."

The projection has been brought on by a rapid rise of a new breed of young and independent travellers from the People's Republic.

Tourism Australia's John Sullivan says, "Independent traveller visitors go farther and experience more of our country."

As mining begins to slow, sectors such as tourism will become increas-

ingly important to the economy.

In April, Tourism Australia launched a Fit Independent Tourism (FIT) campaign in the PRC, specifically targeting independent travellers by highlighting many of Australia's unique and distinctive holiday experiences.

Top tourist source markets to Australia in 2012
1. New Zealand, 2. China, 3. UK, 4. USA, 5. Japan, 6. Singapore, 7. Malaysia, 8. Korea, 9. Hong Kong, 10. India,



Asian visitors bring a huge boost to our tourism market



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WHERE EXPERIENCE COUNTS

Owners fall out in \$1.2 mil Gold Coast love ranch deal

As owners of legal brothels are building a campaign against the competition posed to them by illegal "outcalls" by home based escorts, a recent court case has given a glimpse of the profits that successful bordello businesses can generate.

The case concerned two acquaintances intent on establishing a love ranch in a Gold Coast industrial estate who came unstuck as a result of different interpretations of a DIY agreement for the venture.

In an argument that went all the way to the Court of Appeal, each had a different interpretation of their "falling out", the term used in the paperwork as the trigger for a valuation to determine the buyout price to be paid by one to the other.

Craig Leach - a former federal police officer who discovered the Bundall warehouse site but was barred from obtaining a licence - invited confrère Paul Ross, to head the operation on a promise from Ross to pay for half its value as determined by a licensed valuer.

That understanding was recorded in an agreement they prepared and signed in August 2004.

The 2/37 Upton St business was up and running - under the name Utopia in Paradise - by December

2005.

A difference between them occurred about a year later when Ross revealed a confidential undertaking given to the licensing authority, to have no business association with Leach.

Leach - whose intention had been to eventually obtain a licence so he could operate with Ross in partnership - sued Ross in January 2009 for his share of set up costs for the red light establishment. That resulted in a \$170k cash settlement from Ross.

The business valuation lawsuit was filed by Leach in May 2010, claiming "up to \$600k" for his half share and pointing to January 2009 - the date of the earlier lawsuit - as the "fall out" date.

Ross and his company Babes in Paradise P/L, countered that the relevant "falling out" has occurred in December 2006: a point in time when its turnover and value was far lower.

Justice Jean Dalton expressed "strong reservations" about the credit worthiness of both parties who had been "vague and careful with their evidence" in order to avoid admitting any breach of prostitution laws.

She nevertheless concluded - in Leach's favour - because the parties continued working according to their original agreement

until the January 2009 suit was filed, that was the time when the "falling out" occurred.

The appeal against that decision was dismissed and Ross was ordered to pay Leach's costs of the four day trial and the appeal. The judgment does not reveal the precise amount Ross must cough up in payout of Leach's half share.

A genre all of it's own: clockwise from below, Jennifer Love Hewitt as reluctant sex worker in *The Client List*; Taryn Manning in *Love Ranch*, a 2010 film about Nevada's first legal brothel; the original *Belle De Jour*, Catherine Deneuve.



Aircraft Crash Log

26 June 2014. Tecnam P96 Golf Ultralight, Lyndoch, S.A. Private flight



The ultralight encountered low cloud and fog after departure from Lyndoch in the Barossa Valley en route to Mildura. The location of a wing of the aircraft 1km from its crash site indicates either a break up in flight or the pilot encountering spatial disorientation that put it into a high load spin. The pilot and passenger, both locals, died on impact as the aircraft crashed in a paddock between Rockford Winery and Villa Tinto Winery and burst into flames.

22 June 2014. Christen A-1 Husky, Florida. Private flight



Just before 4.00pm a single engine aircraft departed the Tampa runway when seconds later it impacted terrain. The aircraft sustained substantial damage and the pilot died from impact injuries. The Husky is a US designed and built metal tube and fabric light utility aircraft used mostly for fisheries patrol, glider towing, border patrol and other observation missions.

18 June 2014. IAI 1124 Westwind, Synfuels, Non Commercial flight



The aircraft had climbed to 50-100 feet on take-off en route to Birmingham.

ham. It banked steeply to the right before crashing into a cotton field to the west of runway 18R at the Huntsville International Airport. It was consumed by a post-crash fire and the three occupants on-board died at the scene.

13 June 2014. Cessna 525 CJ1 Citation Jet. Brazil. Domestic Passenger flight



The Citation CJ1 with five passengers en route from Goiania was landing on runway 24 at Aruanã when it overran the landing area by 350 m. It lost its nose gear and came to rest at a fence just short of the highway. The passengers - who with the two crew sustained minor injuries - were on their way to a memorial for soccer star Fernandão Lucio da Costa who died a week earlier in a helicopter accident along with four others. Aruanã is a tourist hot spot in Goiás state on the Araguaia River about 480km west of Brasilia.

30 May 2014. AT42, Brazil. Total Linhas Aereas. Domestic Passenger flight.



The aircraft was departing for Manaus with 45 passengers when it struck a Brazilian Tapir (pig) on the runway at Coari. The crew continued take off but and burned off excess fuel before an emergency landing at Manaus brought the aircraft to a stop. Passengers and the four crew disembarked via the runway. The airport was closed for about 2 hours. The tapir strike bent the right main gear.

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Editorial



Rights gap elephant may breed "Recognition" pup

Progress towards constitutional "recognition" of indigenous Australians continues, with a decision on what initiatives will be put to voters for a referendum decision to be made by the end of 2014.

Peter Garrett join march for Recognition Although the joint parliamentary committee charged with deciding the final formulation can yet recommend the least provocative "preamble" option, it now seems likely that the amendments floated will be to the constitution itself.

The measures that appear to have found favour, are for the inclusion – in words yet to be decided – of an affirmation of Aboriginal and Torres Strait Islander peoples as our first inhabitants and to modify paragraph 51 (xxvi) to permit a benevolent racially based federal law in respect of only them, as opposed to the current position which permits any good or bad law affecting any race.

There is reason to argue that this should be extended to allow capacity for laws for the benefit of any disadvantaged ethnic group.

There will also likely be a YES/NO vote to decide the deletion of sections 25 which specifies races banned by states from voting, are not to be included in head count

for federal seats.

Because the powers that are proposed to be modified have not been utilised for decades, many argue the measures are largely "symbolic".

Clearly though, racial provisions in the constitu-

of the lowest life expectancies of all developed nations. Urgent practical measures are clearly called for.

Australian governments have for decades struggled with successive failures in policies intended to make big advances in closing the

While it is true that the constitution ignores the continent's first inhabitants, the document does not "exclude" the pre-contact population, in the sense that others are granted rights and freedoms that they are not.

Australians remained – at least until 1942 when a further British law was enacted to grant legal independence – subjects of the crown.

With a few exceptions, the liberties and freedoms of individuals – as opposed to the crown and government – were ignored by the constitution. It is not just the indigenous who have no constitutional "recognition", none of us do.

Freedoms acknowledged to subjects in 1900 were few: the right to vote in federal elections, trial by jury for federal indictable offences, federal religious freedom and protection against federal seizure of property.

The states though, are not required to acknowledge even those few liberties and can legislate away, the freedoms we take for granted.

Having been elevated since 1942 from "subjects" to "voters", we now have a perfect opportunity for us all to gain the status of true citizens.

If there is to be a referendum, then let's have these further questions decided:-

- Recognition that the sovereignty of the nation is derived – not from the crown – but the people, all people,



indigenous included;

- That basic freedoms – of speech; of the press; of religion; from interference with the common law; of communication on political matters (which currently exists only "impliedly"); from unreasonable search and seizure – be permanently protected;
- That the states be bound to observe the federally documented liberties.

Constitutional "recognition" of pre-contact culture and peoples is important and necessary. But to hold that discussion in a "rights" vacuum, spotlights the obvious incongruity of a very large elephant in the debating hall and risks the entire process ending up with a "recognition" runt.

- Peter Carter



tion are offensive and should be removed.

Can we do better? Are we – including our indigenous cousins – being sold a pup?

Indigenous Australians still have one the lowest standards of education, health and housing and one

gap. Bigger ideas are needed.

These issues, including the Recognition referendum itself, must be understood against the background of the limited endowment, actually provided to the populous by the nation's constitution.

The *Commonwealth of Australia Constitution Act* – a law passed in 1900 by the British parliament that at the same time delivered nationhood and established the constitution – was also concerned with preserving a role of successive British monarch.

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Fund group in \$1.6 million clawback

A Brisbane based mezzanine finance group has claimed in the Supreme Court that it made a \$1.6 million property investment on the strength of representations that the net worth of the project developers would yield surplus assets in the event of any default.

Such claims – by funds managers Anthony Moreton – are alleged to have included representations concerning Paul Brinsmead's Kingscliff and Gold Coast property holdings and colleague Peter Madras' "big double block at Kingscliff".

The deal – with the ill-fated Resort Corp – was done just prior to the eruption

of the US sub-prime mortgage crisis in June 2007.

Resort Corp's glittering Tweed Coast apartment portfolio crashed when the company went into external administration in early 2009. The Venerdi finance group's investment went with it.

Because the relevant representations were false or made without reasonable grounds, so Venerdi alleges, the information memorandum in which they were contained was "misleading or deceptive".

It claims relief against Anthony Moreton Group and CEO Anthony Hazell – for the value of its investment plus its "opportunity cost" of \$680k – under the

TPA equivalent of s18 of the Australian Consumer Law, and in negligence.

But the Defendants have counterclaimed, alleging that Venerdi should in turn be liable to them for Venerdi's breach of their own warranty spelled out in the documents that it had "made its own assessment" of the developers and had not relied on any representations made by them.

Moreton and Hazel were just as much entitled to rely on that as Venerdi was entitled to rely on theirs, they assert.

On that reasoning, any damages payable by them to Venerdi for their error, must be paid back to them by

Venerdi as a consequence of Venerdi's breach of its "no reliance" warranty.

But according to the court, such logic was flawed.

Allowing the defendants to cross claim for the amount of their own liability

for misleading or deceptive conduct would "extinguish the plaintiff's claim and in effect destroys its statutory right to damages".

Moreton and Hazell's counterclaim was struck out but they were given leave

to file an amended defence and/or counterclaim, because "it may [yet] be possible to formulate a counterclaim based on the reliance exclusion clause".

The dispute will proceed to trial later in 2014 or in 2015.



Tweed Coast has seen enormous growth

\$100k cash loss cut by half: valuers clash

The re-sale of a Mackay home at a \$100k loss after the first buyer failed to settle, has resulted in a far lower sum in damages recovered, because settlement of the subsequent sale occurred more than 2 years after the termination of the original contract.

Geoffrey and Julie Baguley sold their home at 30 Byron Street, Mackay for \$400k in August 2010, with settlement due in October. The buyer defaulted and the seller sued.

The Property was ultimately resold on 17 October 2012 for \$300k settling in January 2013.

The Baguleys claimed the \$100k diminution in price, accumulated interest of \$40k over the intervening years and commission & legals on the first sale.

The issue at trial was the difference between general law

damages on the one hand and liquidated damages allowable under standard condition 9.4 and 9.5 of the REIQ contract terms.

Damages for breach are generally assessed as at the date of the breach. Evidence of value must be produced as at that date, to allow the court to make the assessment and calculate the difference between that and the contract price.

Clause 9.4 obviates the requirement by specifying that the seller can recover as "liquidated damages" the deficiency in price on resale plus expenses but only if the re-sale "settles within two years of the termination" of the original contract.

Because settlement of the subsequent sale occurred here after two years from the date of

termination, the seller was precluded from recovery of that type.

Rather, damages fell to be assessed under the general law, i.e. as at the date of breach in October 2010 or another appropriate date the sellers could persuade the court that the circumstances warranted be adopted for that purpose.

Was it reasonable for the Baguleys to retain the home for more than two years? The court answered this question in the affirmative because they had taken all reasonable steps to effect a sale in the meantime. But other variables caused the court to prefer the date of breach, as the appropriate date for assessment of the loss.

So the relevant question was the value – as determined by expert valuation evidence –

of the home at the resale date in October 2010, at the relative beginning of Queensland's GFC related property crash.

The resale loss available for recovery of expert valuation evidence was a mere \$50k.

The court allowed recovery of the loan interest of \$40k and would have allowed commission and legal costs on the resale, but because the Baguleys had only argued for those in respect of the first aborted sale

– which under law are not recoverable – they missed out on the part of the recovery.

Total judgement, after crediting the \$1000 deposit forfeited from the original sale, was \$88,982.00.



Mackay property supported by coal and sugar activity

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Does your home have a scandalous past?

Haunted house syndrome a sales issue for Agencies

How would you go about selling a home with a scandalous past? Do you have to tell prospective buyers about a home's regrettable history even if it has no connection to the building's structural integrity?

We are talking about 'character flaws' in real estate. In other words, features of a property which are not apparent in the physical structure, but which might lower its value or make it less enjoyable to the buyer.

A typical example is where a house has been the scene of a murder.

Just how much do you have to say, if anything?

Bizarre as it may seem, this issue has already been addressed by an Australian court.

In 2004, a NSW teenager named Sef Gonzales murdered his entire family with a baseball bat. The family home was put on sale. The intending buyers did not learn of the murders until after the

contract was signed. They refused to settle. Eventually the house sold to different buyers for 10% less than the originally agreed price.

The agent was disciplined by the NSW Office of Fair Trading for contravening the rules requiring agents to act 'honestly, fairly and professionally' with all parties.

Similar provisions exist in Queensland so it is very likely that a similar result would occur here.

Silence may also amount to misleading or deceptive conduct under the Australian Consumer Law.

The Australian case law is slim, but American cases indicate that, in a Gonzales-like context, an agent's failure to warn a buyer about psychologically "tainted" property would be grounds to crash the contract.

Such "emotional defects" or "character flaws" really relate to superstition or emotion and this type of "defect" can indeed be covered in a contract special condition that could even go so far as specifying that the buyer waives any perceived a need to be told of the features of the "emotional" features of the property. Be aware though that ant such waiver must be "informed" so that either way you can't escape spilling the beans on what you know.

Gold Coast agent ordered to reimburse Hope Island rent



Gold Coast agent must reimburse Hope Island rent

Queensland's Civil and Administrative Tribunal has ordered that the Gold Coast real estate agent Damian Repovs reimburse \$7.5k in respect of rent received that was "not deposited to the respective bank accounts" of Hope Island

homeowners and promotional products suppliers, Stephen Unwin and Kerry Hampton.

The Office of Fair Trading had paid out the homeowners' claim against Repovs' residential rentals management company, Growstar Pty Ltd from the PAMD fidelity

fund and were seeking an order from QCAT requiring the agent make reimbursement within 21 days.

Repovs was unrepresented at the hearing and the order requested was made "on the papers".



A home's tragic part is a real issue for agents

Fatal traffic crash, Petrie, May 28

A 24 yr-old motorcyclist was travelling west on Eucumbene Dr when it overtook a vehicle and collided head on with an oncoming car. The rider was transported to RBH where he later died.

Fatal traffic crash, Felton South, May 30

Around 4pm a B-Double and ute collided at Toowoomba Karara Rd & Clifton Pittsworth Rd intersection, overturning the ute. The truck driver was transported to Toowoomba Hospital with minor injuries but the driver of the ute died at the scene.

Fatal traffic crash, Yandaran, June 6

A rider died after a vehicle veered onto the wrong side of Bundaberg Lowmead Rd near the intersection of Littabella Creek Rd and collided with him at around 8pm. The driver of the car was taken to Bundaberg Hospital with serious injuries.

Fatal traffic crash, Russell Island, June 7

A car collided with a 14 yr-old boy riding a skateboard on Centre Rd at around 5.20pm. The boy was pronounced dead at the scene.

Serious traffic crash, Rockmount, June 8

Two motorcycles collided on Rockmount Rd around 5.30pm. A 30 yr-old female rider with a broken arm was taken to Toowoomba Hospital. The 15 yr-old male rider of the other motorcycle was airlifted to Mater Children's Hospital with serious head injuries.

Fatal crash, Brookfield, June 8

A 5 yr-old boy walked in front of a vehicle driven by a family member on Brookfield Rd around 4pm. The boy was rushed under police escort to the Royal Children's Hospital with serious injuries and was later pronounced dead.

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PAMDA dead & buried by October

Unknowns ahead, answers still needed

Followers of the blog version of this newspaper know well of our efforts over the years to rid our state of the beast known as PAMDA.

The monster was defanged of its very worst venom with the abolition in October 2010 – a full 10 years after its terrorising reign began – of the hideous ‘paperclip’ and ‘document order’ rules. Yet – as predicted – it simply grew other heads. Since then there have been many measures, which put the death of the despised animal within grasp, but which seriously underestimated the effort and resources needed to strangle all signs of life from it.

Finally – following two enquiries, countless promises and an election – the Property Occupations Bill was passed in May and will come into law to repeal PAMDA by year end.

There is pain yet and cost too, in re-tooling to

accommodate the simplifications that the new legislation brings but it is an immediate antidote to the suffocating bite that has cost Queensland’s real estate and development industries billions over the past 14 years.

Exactly how much day-to-day property practice will change won’t become clear until the regulations – and forms-expect to wait until October – are revealed. Contained in the regulations will be a new set of forms that we must all quickly familiarise ourselves with and deploy across our businesses.

Most significantly of course, the warning statement ritual is gone forever.

Henceforth, a simple clear 45 word one paragraph statement can be incorporated into contracts and the “drawing attention” requirement is gone. Likewise for the BCCM form 14.

Disclosure of the type required by the existing

form 27C is still a requirement but – like many of the above changes – major consequences to real estate practice may result from even subtle changes in the yet unseen forms.

There’s more for sure to be told though on the PAMDA story. Who were its architects? What was the real motivation? Far better consumer protection will result from the mere 45 words that comprise the new “warning”, than the absurd and wasteful mess they dreamed up. The answers of who and why, still need to be told. The thousands of Queensland consumers and real estate industry members who lost the shirts off their back as a result deserve to know.



August 13, 2010



September 30, 2010



June 9, 2010

Some of the images since 2009 in *Take the Law...* blog posts to depict the frustration of the real estate industry over the PAMDA debacle.

Does punishment fit the crime?

Agent penalised \$770k on PAMDA forms breach



Over the top: A Pakistani toddler recently arrested, charged and fingerprinted over attempted murder

The managing agent of a North Queensland resort has been ordered to hand over \$770,000 in fines and restitution of overcharged credit card service fees.

The management company for the Magnetic Island Interna-

tional Resort specified in its appointment document, a charge for the actual credit card commission as set by the bank but in fact it charged a significantly higher fixed rate.

The total of the overcharged credit card service fees over a

number of years on 1135 occasions was \$209k.

The fine ordered by QCAT for the “unparalleled skimming... devised to fly under the radar”, was – despite the obvious “commonality” of the numerous events – double that sum: \$418k.

Had the credit card service charge been specified in the PAMDA form 20A appointments, they would have been entirely permissible charges. Nevertheless the tribunal rejected the agent’s assertion that the situation had come about by reason of simple oversight and a “change in accounting systems”.

The company was also found to have breached the PAMDA Act on 11 occasions for failing to disclose to unit owners entering the letting pool, of its conflict of interest i.e. that it had interest in other units within the pool.

In addition to the fine, the agency’s owner Donald McGrath was ordered to repay the \$209k plus some additional charges levied to owners for “Accor affiliation” and the legal costs of the Department of Fair Trading of \$135k.

According to the Vanuatu Daily Post (quoting the Townsville Bulletin as a source), Donald McGrath is the pseudonym for one Bill Webb, former owner of Port Vila’s Rossi Hotel who was sentenced to eight month’s jail in 1993 for attempting to procure the bombing of his tourist vessel “Queen of the Isles” in order to obtain an insurance payout of \$1.3 million.

Several of the resort’s unit owners complained to Fair Trading in 2009. McGrath’s management agency company collapsed in 2012.

Recent Results

from Carter Capner Law

Construction tragedy



35-yr-old David was deployed as a labourer on a remote North Queensland project. In October 2013, he was assisting a crane operator get a transmission pylon into position. While the dog-man was dealing with another issue, he entered the foundation area to push the suspended pylon section across. He suddenly slipped as the section lowered onto his torso crushing his body. Despite the best efforts of medical crews, David died at the scene. His wife and two children needed help to access superannuation and insurance death benefits and for representation at a future inquest. A superannuation and death benefit payment of \$350k was realized.

Supreme Court to adjudicate a debt reconciliation between them and to have the property sold up. One had occupied the farmhouse on the \$2.5 million wheat and cattle property with his family and managed the agistment of cattle. It became apparent that the business was not being properly attended to so the other sibling will ask the court to force a sale even though the third does not agree.

\$1 mil super dispute

Days before Sherm died from a respiratory illness in Mooloolaba 2010, his girlfriend of 3 months purchased a will kit from the local newsagent. He completed and signed it but because of his state of health, doubts were raised as to his mental capacity. With little value in his estate, his two children, the girlfriend and his former wife, all turned to a \$1 million superannuation and death



\$700k flood claim

West End residents lodged a claim with the Financial Ombudsman’s Service for refusal by Westpac insurance to extend cover to their home that was badly damaged in the January 2011 floods and their furniture and effects that were destroyed. Michael and Julie’s total damages bill was close to \$700k. The damage had come from stormwater backflow but Westpac claimed its flood exclusion applied. The FOS upheld the insurer’s decision but the survey it conducted produced useful evidence to support a claim against their insurance broker for recommending an unsuitable insurance product.



Sibling’s estate dispute

Disagreeing siblings, who received a western Queensland property through their mother’s estate, have asked the

benefit to be divided. The Superannuation Complaints Tribunal ordered the proceeds be divided pending the proving of the newsagency will or an earlier will made 10 years earlier.

Daughter to get super

The tragic premature death of a Brisbane IT manager has resulted in squabbling between the remaining family. The 40 year old died unexpectedly, leaving behind a grieving teenage daughter, ex-wife and parents. Without a will, the parents applied to the court to distribute the assets of the estate. This was challenged by the ex-wife, who sought the rights to administer the estate on behalf of the deceased’s son. The parties agree that the superannuation benefit of about \$100k should be paid to the deceased’s daughter.

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Deregulation
of uni fees...

"This is will affect every single university student especially because not all of us are working and times are getting tougher."



Caitlin Maree
Fortitude Valley

"University may become something that is just for monetarily able students rather than those from lower socio economic areas as they'll no longer have the extra help."



Samuel Oxley

"While I am under informed to the specifics of how its going to affect me in my further life, I don't like the idea of Universities controlling the price that they charge to students."

Aaron Mackenzie
Regents Park



"I definitely won't go as much. He's not a very good Prime minister, all the stuff he is doing in this budget that he thinks is helping us really isn't; he's going to have to work hard to win my vote back"

@Grand Plaza
Browns Plains
\$7 GP
Co-payment...



Kylie Miller
Heritage Park

"I already go to a private doctor and pay \$60 a visit. In saying that though I don't think kids or pensioners should have to pay I think it should only be for people who work full time."



Rachel Runcorn

"I have a young daughter so it won't affect me going to go the doctor because if she needs to go, I'll take her, but I would rather it stay as bulk billing."

@Buranda
Shopping Centre
Pension age
set to increase
from 67-70...



Linda Vancampbell
Albany Creek

"We were both hoping to retire by 65 but we're not going to be if this is passed through. My husband suffers from arthritis, he's a boiler maker so what do you do? What if he can't work until he's 70 and he can't get the pension what do we do and there would be a lot of other people in the same boat."



Janet White
West End

"It's very difficult working until you're 70. Not too many people's bodies remain flexible enough to be able to do any particular job efficiently."



Susan Drake
Greenslopes

"I suppose seeing as we are living much longer now then it is logical for the pension age to go up to 70. Hopefully my husband and I will have enough in our superannuation to get us by till 70."



Julia Wighton

American Independents

It seems Brisbane has fallen in love with the classic flavours of the American Deep South. The number of menus featuring traditional All-American cuisine,

Situated in the glistening new McLachlan Ann building in Fortitude Valley, *Mighty Mighty* - cue and brew successfully combines the polish and



Lefty's old time music hall

in both casual and high-end establishments, is growing as Brisbanites embrace the smoky, greasy, barbecued goodness of Southern fare.

For casual dining, *Tippler's Tap* in Newstead and *South Side Diner* at Southbank offer American classics such as onion rings, sliders, wings and macaroni and cheese. For a more upmarket meal, try *Mighty Mighty* or *Papa Jack's* in Fortitude Valley for succulent smoked lamb ribs and juicy beef brisket.

This hearty comfort food makes for a perfect winter dining experience, where you're guaranteed to leave warm and satisfied.

Mighty Mighty is mighty meaty. This is one for the carnivores.

sophistication of an upmarket restaurant with the hustling heartiness of a New Orleans' backyard barbecue.

These self-proclaimed 'urban cowboys' have mastered the art of high-class home cooking, where old-style Southern comfort food is served alongside fine wine and cocktails for a highly satisfying and truly decadent culinary experience.

From jalapeño corn bread to smoked beef brisket, *Mighty Mighty's* menu offers an abundance of quintessential American home fare - the kind that will transport you from a high-ceilinged metropolitan restaurant to a cosy smoked-filled diner somewhere in South Carolina.

A foodie experience for any budget

Calling all food lovers, amateur chefs, those who just can't decide what to cook for dinner and everyone in between, a new and exciting dining experience awaits you!

Thanks to the creativity of local identities John Stainton, Peter Hackworth and Jacki MacDonald, with inspiration from Asian marketplaces comes Brisbane's Eat Street Markets at Hamilton's Portside.

Eat Street is all about fantastic food at a great price and features 60 differently decked out shipping container restaurants offering an incredible range of food choices. The rustic style marketplace is adorned with fairy lights and pallet seating, accompanied by live music.

Organiser Sandra Donna said they were very happy with the success of the markets.

"We are delighted with how popular the Friday and Saturday nights have been," she said.

Donna explained that the markets will now also be open on Sundays. She described Sundays as a "family-orientated day" which may be a preferred option for people with children who might like to avoid crowds.

Eat Street showcases international cuisines in one brilliant food destination. Stalls include Italian, Greek, Latin, Indonesian, Italian, Hungarian and Venezuelan; with dinner options including seafood, noodles, burg-

cupcakes and the very popular cronuts, a creation of croissant and donut.

When asked whether there were any other possibilities of expansion or changes to the markets, Donna said they are wait-



Saffi Kerezsy

ers, kebabs, dumplings and more. A great meal option is the scallops and truffle salted fries from the Tasmanian Gourmet Food Company. Most of the options fit the price range within \$5 to \$15.

Leaving room for dessert is essential. Options include chocolate fondue fountains,

ing for the word to get out about Sundays to attract larger crowds.

Open every Friday and Saturday from 4pm till 10pm, and Sundays from 11am till 7pm on the river next door to Portside. It costs \$2 to enter Eat Street with kids under 12 years free.

isn't for the faint of heart. Would-be diners need to come equipped with large appetites and loose-fitting clothing.

The traditional, home-cooked style of the cuisine



Texan-style soft tacos

at *Mighty Mighty* doesn't quite translate to the price list: food and drinks carry fine dining price tags. However, the cost is acceptable (given the upmarket location) and possibly justified (given the size of the meals).

The density and intensity and sheer immensity of *Mighty Mighty's* menu might be a bit overwhelming, if it weren't cleverly paired with chic, elegant decor and refined, swift service.



Mighty Mighty's smoked beef brisket

The restaurant boasts tall ceilings, separate levels, and bi fold windows, which open onto the M&A mall to create a cool, airy atmosphere.

Mighty Mighty is the perfect option for special occasions, long lazy lunches or work functions.

Or for any card-carrying carnivore craving a quick escape from inner city Brisbane to the American Deep.



Mighty Mighty's street view

Following US Southern tradition, the food is full-flavoured, hearty and seriously carnivorous (they offer just

one vegetarian option out of 16 starters and mains).

Still, *Mighty Mighty* offers such a great variety of seared and smoky meats (from gumbo squid to liquorice-smoked lamb shank to herb-rubbed and smoked chicken) that everyone should find something to suit his or her fancy.

The rich Southern flavours extend to sides, drinks, and desserts. It's only logical. A 900-gram barbecue beef short rib would seem awful lonely without ale-battered onion rings, collard greens, pecan caramel pie and American whiskey.

But be warned. This joint



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Roxanne Jeynes

World Press Photo collection captured

The prominent World Press Photo exhibition returned to Brisbane for a three-week event in July, showcasing an annual collection that intrigued and mesmerized audiences worldwide.

It was the crème de la crème of photojournalism and the winners of the esteemed contest were on display in its seventh consecutive year at the Brisbane Powerhouse.

Each year, World Press Photo invites photographers from around the world to participate in the top photojournalism contest, awarding prizes in various categories.

This year it was the entry of American photographer John Stanmeyer that won the prestigious first prize. The photo also won first prize in the 'Con-

temporary issues' category.

World Press Photo, a Netherland-based non-profit organisation dedicated to advancing photojournalism, founded the contest in 1955. Since then, it has grown into the world's largest collection of international press photography, attracting over three million people each year.

An astonishing 5,754 photographers from 132 countries submitted 98,671 pictures across nine different categories ranging from sports action to staged portraits and nature photography. In all, the jury awarded prizes to 53 photographers of 25 nationalities.

World Press Photo project manager Laurens Korteweg says it is the foundation's ability to reach audiences inter-

nationally that makes securing a place in the exhibition monumental for any photojournalist seeking recognition for their work.

"World Press Photo creates an exhibition of all award winning photographers every year which travels around the world to about a 100 different locations in 45 different countries. This is one of the reasons the World Press photo exhibition is unique, all competing photographers know, that if their work gets selected, millions of people will see it."

Aside from its diverse categories, it is the exhibition's ability to give an authentic insight into world issues that truly sets it apart from other exhibitions in the same category.

Chair of the 2014 jury, Gary Knight, states the foundation aims to capture audiences and to show the power of photojournalism to affect and inspire us.

"We favored photographs that were the beginning of a dialogue with the viewer, and not the end, and photographs that allowed us to think about what was being photographed and not the photographer who created them."

The result is startling and often provocative with this year's collection portraying haunting images of poverty, violence and death. In the softer categories, other images gave a fascinating glimpse into

the everyday lives of people from diverse cultures - ranging from Russian nudists to Norwegian fishermen and Sioux American Indians in North Dakota.

The exhibition presented a mix of traditional photojournalistic pieces alongside works

that imaginatively challenged the conventions of press-based photography.

If you missed the unique event, the annual yearbook can be purchased from the World Press Photo website, featuring 160 pages of this year's award-winning photos.



African migrants on the shore of Djibouti at night, raising their phones in an attempt to capture wireless signal from neighbouring Somalia.

Giving brings rewards

If we all had the power to make an influential change, would we make the power worth its while?

Would we be able to take the time out of our busy daily grind to see things in another light and put our passion into practice?

Well, in hindsight we all do have the power to influence change and how we use it, is really up to us.

Nation wide people are making small changes, small movements with one thing in common, the belief in a chance to better another life.

May 11 showcased the Mothers Day Classic here in Brisbane, an event that

reached the milestone \$20 million dollar mark for funds raised in the name of Breast Cancer Research.

Chair of the event, Louise

Davidson.

"Participants will tell you there is something special about the atmosphere at the Mother's Day Classic, whether

you attend a huge capital city event or a small community gathering."

First time participant and busy University student, Emily



Jorgia White

Arnold raised close to \$2000 within only three short weeks of fundraising.

"I ran in the Mother's Day Classic as part of 'Michelle's Mob'. Michelle, or Aunty Shell as I knew her, was a close family friend who my family lost to breast cancer in May last year," said Ms Arnold.

"I had never ran 8km before, which is why I chose to do it, I wanted to challenge myself by doing the tougher race because Shell was challenged everyday through her treatment."

The run for change, which began in 1998, has built a courageous empire that empowers people Australia wide.

But running in an event of this magnitude isn't the only thing courageous Australians are doing for change.

Women and men all over the world are participating in

the One Girl - Do it in a Dress campaign, which originated as a non-for-profit organisation, with proven results of "changing the world, one girl at a time".

The organisation is built on the heart-wrenching fact that a girl born into Sierra Leone is more likely to be sexually assaulted than she is to attend high school.

In 2013, the campaign sent 1,207 girls to high school, an influential result from a campaign that began on such a small scale.

My contribution is doing it in a dress' for the remainder of 2014 to raise \$1000 and sending 10 girls to school.

You can donate at: <http://doitadress.com/jorgiawhite>

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Rebecca McDonough

Heritage buildings in short supply

There are few heritage buildings left in Brisbane and a decision by the Queensland Heritage Council not to enter the 100-year-old Bonded Stores into the

heritage register has disappointed many.

The Bonded Stores are located at 105 Margaret Street and consist of three buildings, The O'Reilly's Bonded

Stores, The Free Stores and Hotpoint House.

The stores served as the site for Brisbane's earliest wholesales. The bonded stores provide an evolution of Warehouse architecture and Queensland's industrial heritage.

"The outpouring of public support against the demolition has made it clear that the people of Brisbane value the history of the buildings," community group Brisbane Heritage said.

Architect Noel Robinson says incorporation of the existing structures into a new development is unlikely.

But according to renowned Queensland designer Noel Robinson, "the buildings are of such a sad state of disrepair that demolition is the only economic option."

In a similar move in 2011 the H. Pole & Co Printery building on Elizabeth Street, built in 1915, was demolished to create an entrance to a car park after the Queensland Heritage Council granted the developer immunity from heritage protection.

Recent developments demonstrate that historic

structures can be successfully incorporated into new buildings, including The Austin in South Brisbane, The Woolstores in Teneriffe, The Sugar Refinery in New Farm and Fortitude Valley's Sun Apartments.

Just 2,000 places are included on Brisbane Heritage Register, compared with over 8,000 in Melbourne and

approximately 25,000 heritage listed-sites in New South Wales.

John McDonald from Brisbane Heritage feels the removal of numerous historic buildings from the CBD is unfortunate, saying: "There are ways to incorporate these buildings into our urban environment to keep their character while still building modern,

functional spaces that people want to live and work in."

The New Farm refinery is now one of the last surviving 19th century Colonial Sugar Refinery (CSR) sites in Australia. The original CSR has been retained and the contours preserved transforming it into one of Brisbane's most sought after residential apartments.



No longer there: Margaret St heritage now demolished



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Ellie Grounds

5 OF THE BEST FOR WINTER

My top good-value destinations to snap you out of winter blues

There's no denying it. Brisbane does have a real winter. You can be excused for daydreaming about scorching summer days, or anything that involves drinking out of a coconut on a pristine, white beach. Why dream when there are so many spectacular locations to suit any budget?



1 Krka national park, Croatia

Croatia

Nothing will satisfy a thirst for crystal-clear water like Croatia. The best way to see this aesthetically astounding country is to jump on a boat and island-hop. Make sure to stop off for a swim at Makarska (good luck fathoming the jaw-dropping mountains behind the bay are actually real), explore the lagoons in Mljet's National Park, and make the daytrip from Split to frolic in the waterfalls at Krka National Park.

2 The Castle of Sintra, Portugal

Portugal

Famous for its limestone mosaic-patterned streets and delicious Portuguese custard tarts, Lisbon is a destination that should be on everyone's bucket list. The long, sunny days in summer can be spent trawling flea markets, riding the city's rollercoaster-like trams or exploring the hip wine bars and restaurants in Bairro Alto. Take a day trip to Sintra and discover the myriad of centuries-old castles and palaces, or visit the seaside fishing village of Cascais and brave the ice-cold Atlantic waters.

3 Top of Primrose Hill, London

London

If you're lucky enough to nab dates in London void of rain (trust me, it is possible), you're in for a whirlwind of a time. The Brits go loco for summer. Regent's Park is abuzz with activities, with people playing baseball and boules and everything in between. A short stroll away is the glorious Primrose Hill, which provides the best vantage point to see London's skyline and is best enjoyed at sunset with a cider in one hand and a red velvet cupcake from Primrose Hill Bakery in the other.

4 The Flower Dome, Singapore

Singapore

If you're craving the heat and mugginess of a Brisbane summer, equatorial Singapore has you covered. Start the day with a visit to hip Tiong Bahru, picking up breakfast at the local Wet Market and a decent coffee at Perth ex-pat Harry Grover's 40 Hands. Next, head to Gardens by the Bay to check out the awesome Flower Dome, the world's largest column-less greenhouse, home to a colourful array of flora from California to the Mediterranean.

5 Sunset over Cylinder Beach

North Stradbroke Is.

If you're looking for something a little closer to home, a weekend escape to Straddie will certainly shake off those winter blues. The island enjoys a subtropical climate all year round, and a sunshine-filled day on Cylinder Beach will make you think it's summer again already. Warm up in the morning with a relaxing stroll around Point Lookout's North Gorge, and finish the day with a scoop of the island's famous Oceanic Gelati (fingers crossed Iced Vovo is on offer). May to July is the perfect time to spot the thousands of Humpback whales migrating north.



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CAN bank merciless

No patience for inventive borrower

A bank customer has tendered a one dollar "bill of exchange" redeemable at a Mullumbimby café, to delay the lender's recovery of possession of his home and an outstanding \$1 million loan.

In a novel contention, Jan Roskott claims his promise to pay contained in the "bill", is a sufficient discharge and obliges the CBA to sue for default on that obligation, rather than maintain its proceedings under the mortgage.

Roskott — a US educated artist and performer — had taken out the loan for his Frasers Road residence in May 2006 and kept up his obligations until October 2012 was the first default notice issued.

The home is located on a ridge that commands valley, mountain and ocean views to the east towards Byron Bay and the iconic Byron lighthouse.

The "so called" bill of exchange was typed up at home and included in a text box in the centre, the figure: \$1,083,754.89, representing the loan balance.

By delivering it to the bank on 30 January 2014, the self-represented borrower argues he has provided a "promissory note" to the bank and thereby discharged the loan.

Why the instrument was expressed to be "payable at and not elsewhere", the Poinciana Café at 55 Station Road Mullumbimby, is not clear from the court judgment.

When a similar "bill of exchange" drawn in almost identical terms, was relied upon by another distressed borrower before the same Supreme Court in 2013, it considered the instrument "plainly worthless".

Roskott had earlier succeeded in gaining from the Financial Services Ombudsman, a six month reprieve to allow him to recruit a buyer for the home.

When that moratorium expired in January with no offers in the wind, the bank filed recovery proceedings.

The Supreme Court, unsurprisingly, saw no merit in Roskott's invention and could see no legal defence among his curious contentions.

His defence was struck out and the bank was given leave to proceed to take possession of the home.



The renowned Poinciana Cafe in Mullumbimby

Law change fuels "employment discrimination"

Judges agree

New laws that deny employment rights to workers who give misleading information about their medical history in job applications, will lead to "employment discrimination" against physically impaired workers, according to at least one Queensland judge.

The October 2013 changes to the *Workers Compensation and Rehabilitation Act* give employers the opportunity to consider the workplace suitability of applicants for the duties they will be required to perform.

Job applicants must disclose all pre-existing events and medical conditions to the employer, on written request contains a warning of the legal consequences of non-disclosure.

The same law entitles prospective employers to access government records of an applicant's



Employment discrimination can also apply on age

employment history.

In March, Judge John Baulch of Townsville's District Court noted that as a result of the mandatory disclosure, such persons now face "significant difficulty in obtaining employment".

Sensible employers would, he ruled, be "unlikely to employ" a medically impaired person, over an able bodied applicant with the same skills.

Those comments were echoed in May in the Supreme Court when Jus-

stice Duncan McMeekin observed in the case of a central Queensland miner, that courts are often told by employers and expert witnesses "about how employers favour those employees who are able and adaptable".

The punitive measures associated with non-disclosure of prior medical issues are seen to be an obstacle to well-meaning and determined job applicants, intent on pulling themselves out of welfare dependency.



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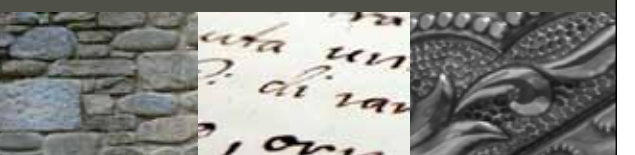
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Neighbour fight ends with \$1 mil costs bill

“Some controversies should never be litigated”

A long running feud among neighbours in an idyllic waterfront hamlet has ended after four months in court, with one set of protagonists ordered to pay the legal costs of the other and those of local police, estimated to exceed \$1 million, four years after they had rejected an offer to pay them \$600k.

In 2002, Jean Luc Clavel and Sarah Clavel – who moved to the waterside village of Mackerel Beach in 1994 – sued their former neighbours, Kim and John Savage after years of tit-for-tat hostility that began over complaints to local council concerning unauthorised building work.

After 15 weeks of testimony and argument, the NSW Supreme Court shut down all but four of their claims, ruling the others had no basis in law.

That was in October 2010 when the court also dismissed Jean Luc's claim against NSW police for ma-

licious prosecution over numerous police charges and AVOs sought against him by local residents and even police officers, all of which were eventually dismissed, dropped or mediated.

The Clavels' four outstanding claims plus liability for legal costs were the subject of separate submissions and a hearing in 2013. The final judgment was published in April.

Hostility between the pairs extended to complaints about the number of times one of the other neighbours mowed or raked the grass; the number of times a dinghy was driven up on to the beach; a “gunsight” laser being aimed into a home; stones thrown onto rooves; insults flung during fenceline shouting matches and a dispute over the escape of a pet rabbit.

The rabbit hunt triggered an analogy by Justice Stephan Rothman between the protagonists of the Pittwater township – where ram-

shackle holiday shacks are interspersed among architectural masterpieces – and the inhabitants of the imaginary “wonderland” into which the bewildered Alice had fell.

During the 2010 hearing, the Clavels rejected a \$200k settlement offer from NSW police plus \$400k for costs.

Rothman – who had also presided over the main event in 2010 – pointedly observed “some controversies should never be litigated, regardless of the rights and wrongs of the particular parties. A neighbourhood dispute of this kind, no matter how serious, cannot justify the costs”.

The longevity of the dispute was indeed surprising given the Savages moved away from Mackerel Beach in 2001 followed soon after by the Clavels – who had migrated from France in 1985 – with no contact whatsoever between them since.

Although the four remaining incidents involved deliberate acts of “wrongful conduct”, the court ultimately ruled that the plaintiffs fell short of proving the prerequisite intention or reckless indifference by the Savages.


Their solicitor was spared the final agony of the impending debacle due to his “continuing unavailability” for the final sitting and arguments. By then, both couples appeared before the court unrepresented.



Great Mackerel Beach: no cars and perfectly tranquil



Long suffering Kim and John Savage also wrong, but vindicated




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How much loyalty...

» from page 1

tained builders S & E Hall Pty Ltd to build their home. Unfortunately the construction produced a litigated dispute in which White acted for the builder.

The Maxwell-Smiths' claims were sunk and they were ordered to pay costs, to recover which Hall Co served bankruptcy proceedings upon them.

lower court ruling. After a solicitor's role in a transaction has come to an end, "there is no continuing equitable or contractual duty of the solicitor to a former client", they held. There was no implied "duty of loyalty" and to act against a former client involved no "conflict of interest".

In the absence of evidence that White had used



Solicitors not required to display the same commitment to clients as required for tatoos

White's former clients then turned on him alleging he had acted under a conflict of interest and had thereby breached a "continuing" duty to them.

The District Court dismissed the claims. There had been no breach of duty in relation to the retainer, it ruled, and no tortious abuse of process in relation to the two bankruptcy notices.

The allegations went on appeal with Eugene and Inge arguing their case in person.

The Appeal Court judges unanimously upheld the

court process for an improper purpose or engaged in some overt act or threat, distinct from initiating the proceeding itself, the tort claim was not made out.

Eugene and Inge were ordered to pay Mr White's legal costs of the lower court hearing and the appeal.

So the answer to our question: absolutely no loyalty at all. If allegiance is what a client requires, it appears they must pay up to 'retain' the lawyer to be on call and to not act against them.

G20 turmoil...

» from page 1

Rydges Southbank, Brisbane Hilton and Hyatt Regency Sanctuary Cove.

Apartment residents in some Brisbane CBD and Southbank complexes will be affected by the criminal record requirements and movement restrictions from 10 November. Vehicle details must be given to police so movements can be monitored.

Excluded persons will be detained at an "undisclosed location" at the state's expense.

New offences for actions such as "crossing barriers" and "disrupting" meetings are likely to catch the innocent bystander.

The city is after all, being geared up for the excitement with a four weeks pre-summit "cultural programme" when the "city and surrounding suburbs will come alive for a world-class celebration of arts, culture and sport." Brisbane gets a public holiday on 14 November.

The Pacific Motorway will be closed for "motorcade" events - possibly for hours at a time to allow the route also to be pre-checked for "unattended parcels" and "abandoned



Social cost vs economic benefit

vehicles" - while leaders are transported the 62 km from Sanctuary Cove to the BCEC and back.

But don't expect to catch a glimpse of Vladimir Putin or any other leader from the roadside: a "motorcade" zone extends to both sidewalks beside the roadway.

Special arrangements have also been made for airspace over the Brisbane CBD and a further "restricted zone" has been created at the general

aviation area in a corner of Brisbane International Airport. The parking of up to 40 VIP aircraft including air force one itself, is being catered for.

The G20 Act prohibits obvious items - firearms, swords, longbows, whips, remote-controlled planes and spearguns - but also rules out sundry objects such as cans, jars, and even eggs, within a G20 zone (including in a residence) unless the person has a "lawful excuse".

"Banners" that exceed 100cm x 200cm - which presumably includes electioneering and real estate corflutes - are also banned.

Plans for the transport, accommodation and entertainment of world leaders are well advanced. But protest groups intending to defy restricted security zones - are also well prepared for their bid to gain international attention.

Brisbane Aboriginal Sovereign Embassy spokesman

Wayne Wharton has reportedly estimated up to 4000 indigenous rights protesters - local and from Europe, Asia and North America - will be present.



The locally based Anti-G20 Action Group, says "anything is on the table" in terms of protesting because security zones were "completely illegitimate".

Having paid the cost of personal freedom, the economic benefit from an upsurge in international business interest and from future meetings and conventions, will have to prove worth it.



Anti-G20 protestors in Toronto

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Gun-shy Mirvac nailed on railing collapse

Outsourcing no defence

When the balustrade on the first floor of Peter Richardson's home gave way and sent him crashing down, expensive sculptures and objet d'art were destroyed.

Mirvac built the home in 1998. It contracted WB Jones Co to manufacture and install the staircase and balustrade. WB Jones contracted JMKG Co to install it.

Who should bear the hundreds of thousands of dollars in cost?

JMKG used guns - in accord with its usual practice - to fire nails through the bottom plate of the balustrade, through a gyprock overhang, through a 15mm space and then into a wooden bearer.

That 15mm space - within which there was no "withdrawal load" to resist a nail being pulled out - was the crucial reason why nail guns were the wrong tools for the job.

First, a tradesman nailing by hand can surmise a gap, even without seeing it, when there is the resistance changes at some point as a nail is driven in. He or she can compensate by using longer nails.

Second "withdrawal loads" are "considerably less" for gun driven nails, as compared to nails driven by hand.

With these features in mind and given the requirements of AS 1720.1 - the relevant standard to which any structural component and must conform - hand driven nails were the only option for this task.

In the July 2012 trial, JMKG was held primarily liable because of its unsound fixing method it employed in the Sydney home. Mirvac and WB Jones were also liable for having failed to retain a competent contractor to do the job but were not vicariously liable for JMKG's negligence.

Liability was apportioned by the District Court as to 30% each against Mirvac and WB Jones and 40% for JMKG.

All three defendants appealed their share of liability with Mirvac arguing that it had no inspection duty as a developer and was entitled to rely on the competence of the contractors it engaged.

The NSW Court of Appeal rejected that contention, ruling that - given that a failure of the balustrade above a void could produce serious consequences - it had an obligation to inspect and assess its load-bearing capacity.

Although a designer/builder such as Mirvac might not be expected to be aware of every applicable standard, that related to the fastening of load-bearing timber; it was so "fundamental", that its defect inspections should have been conducted with it top of mind.

WB Jones were in the same position in regards inspecting JMKG's work. That obligation



Human experience equates ballustrades with safety

was not discharged by any assumption that Mirvac would perform the role.

Jones also knew JMKG consistently used nail guns when affixing fasteners - and

even though it did not appreciate the risk - it was nevertheless liable on the further ground, for engaging a contractor that it should have known was unsafe.

The Court of Appeal altered the proportion of the parties' liability to 25% each for Mirvac and WB Jones and 50% for JMKG, the principal wrongdoer.

Tangle over pre-settlement storm damage

Who pays?

John O'Rourke signed a contract in December 2012 for the sale of his company's East Street Rock-

hampton site to Georgina and Karl Schamburg, for \$1.38 mil, settlement due in April 2013.

In January, the property was damaged by a tropical storm.

As is customary, the

contract put the property at the risk of the buyer from signing. But the parties discussed and documented a variation requiring the seller to make a claim under its insurance for the repairs and for part of the sale price to

be held in the buyers' solicitors' trust account to meet the repair costs if necessary.

Settlement occurred with \$80k held as agreed with it also to be available to subsidise a rent receipt shortfall from the tenant - Pimp My Party - during the rent-abatement pending completion of repairs.

The seller's insurer responded to the claim with a request for information from the buyer - in particular whether they had a potential claim under their own insurance policy - before it would authorise repairs assessed at \$48k.

For reasons unexplained in the judgment, the buyer declined to provide the information and the insurance claim went nowhere.

O'Rourke's company sued to recover the \$80k retention on the basis that the Schamburgs had breached implied

terms that they would "do all such things as were necessary to enable the other party to have the benefit of the contract" and "would act with good faith with respect to the other party".

The District Court at Rockhampton ruled in favour of buyer to the extent that it could access \$8.8k of the retention sum for the tenants rent shortfall and that the seller's claim should be struck out because it was insufficiently particularised.

O'Rourke will however be permitted to re-plead its company's case and can be expected to take the argument further.

Buyers should note that standard REIQ and ADL residential sale contract terms provide that the property is at the buyer's risk from the date of sale.

Even though, the *Insur-*

ance Contracts Act 1984 (Cth) deems the buyer to be insured under the seller's home insurance policy in many cases, there is no contractual duty on a seller to maintain or renew any insurance up to settlement. The seller might not even have insurance. Even if the seller does have insurance, a buyer cannot be sure of the adequacy or validity of the policy.

It is therefore always prudent that buyers arrange insurance cover to take effect immediately.

In the absence of insurance, the buyer may, in the worst case, be left with a substantial repair bill for damage to the property occurring pending settlement, over and above the purchase price.



Storm clouds gather over Queensland's Central capital - Rockhampton



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