

AFFIDAVIT OF KYLIE DAVIES – 6 JUNE 2007

COURT DETAILS

Court Supreme Court of New South Wales
Division Equity Division
List
Registry Sydney
Case number

TITLE OF PROCEEDINGS

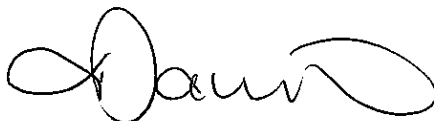
First plaintiff **Perpetual Limited, formerly known as Perpetual Trustees Australia Limited**
[ACN 000 431 827]
Number of plaintiffs 1
First Defendant **Fiona Caroline Cristian**
Number of Defendants 1

FILING DETAILS / ADDRESS FOR SERVICE

Filed for **Plaintiff**
Address for service Dibbs Abbott Stillman
DX address 101 SYDNEY
Telephone (02) 8233 9500
Fax (02) 8233 9555
Email syd.litigation@daslaw.com.au
Court user number 80
Reference number GTB/GAK/JAB/3301650

AFFIDAVIT DETAILS

Name Kylie Davies
Address Level 11, 123 Pitt Street, Sydney, NSW
Occupation Manager



On 6 June 2007, I say on oath:

1. I am a Manager employed by the plaintiff and in that capacity I have the authority to swear this affidavit on the plaintiff's behalf.
2. I believe that the information contained in this affidavit is true to the best of my knowledge, information and belief. The source of my knowledge as set out in this affidavit is the plaintiff's file material and other documents and records in its possession, including the plaintiff's computer records and loan account database.
3. I believe this evidence to be true because the above mentioned materials are part of the usual customer records kept by the plaintiff for its internal purposes and for use, inter alia, when required by the plaintiff's Default Management Division.
4. The plaintiff commenced proceedings against Mrs Fiona Caroline Cristian, the defendant, in the Common Law Division of this Honourable Court by way of Statement of Claim and Notice of Motion for Summary Judgment on 14 July 2006. The proceedings were allocated file number 13403 of 2006 ("the Proceedings").
5. The Proceedings were commenced pursuant to a Loan Contract signed by Mr Arthur Cristian and the defendant, dated 25 August 2005, by which the plaintiff made a loan to Mr and Mrs Cristian of \$664,000. The loan was secured by a registered mortgage granted by the defendant, dated 20 September 2005, over the property known as 40 Warrain Crescent, Currarong, folio identifier 54/755903 ("the Property").
6. On 15 November 2006, following a contested hearing, His Honour Justice Hidden ordered that the defendant give the plaintiff possession of the Property. A copy of the Judgment of Justice Hidden, dated 15 November 2006, is exhibited to me at the time of swearing this affidavit and marked "KD-1". A sealed copy of the Judgment entered by the Court on 16 November 2006 is exhibited to me at the time of swearing this affidavit and marked "KD-2".
7. On 21 December 2006, the defendant brought a motion before Her Honour Justice Simpson in this Honourable Court, seeking a stay and revocation of the judgment of Justice Hidden. Her Honour Justice Simpson dismissed that motion with costs.
8. On 22 December 2006, the defendant brought a motion before Her Honour Justice Beazley in the Court of Appeal. The defendant sought a stay of execution of the judgment for possession of the Property and applied for an extension of time to seek leave to appeal the judgment of Justice Hidden. Justice Beazley dismissed the application for a stay of execution, with costs, and granted



the application for an extension of time to file an appeal.

9. On 19 January 2007, the defendant appeared before the then Duty Judge of this Honourable Court, His Honour Justice McDougall, seeking a stay of execution of the writ of possession issued pursuant to the judgment of Justice Hidden. Justice McDougall dismissed the application with costs on an indemnity basis.
10. On 22 February 2007 the plaintiff took possession of the Property pursuant to a Notice to Vacate issued by the Office of the Sheriff.
11. On 5 March 2007 the defendant filed a Summons for Leave to Appeal in the Court of Appeal. These proceedings were allocated file number 40839 of 2006.
12. On 2 April 2007 the Court of Appeal, consisting of His Honours President Mason and Justice Handley, heard the defendant's application for leave to appeal the orders of Justice Hidden made on 15 November 2006. The Court of Appeal refused leave and dismissed the summons of the defendant, with costs. A copy of the Judgment of President Mason and Justice Handley, dated 2 April 2007, is exhibited to me at the time of swearing this affidavit and marked "KD-3".
13. On 12 May 2007, the plaintiff sold the Property at public auction. The settlement of the sale is scheduled to take place on Tuesday 12 June 2007. A copy of the Contract for the Sale of the Property is exhibited to me at the time of swearing this affidavit and marked "KD-4". The purchaser's name and address have been deliberately deleted from this exhibit to protect the purchaser's privacy.
14. On or about 31 May 2007, the defendant lodged a caveat over the Property. A copy of an email from the defendant, with attached title search of the Property, dated 31 May 2007, is exhibited to me at the time of swearing this affidavit and marked "KD-5".
15. A copy of the caveat lodged over the Property by the defendant is exhibited to me at the time of swearing this affidavit and marked "KD-6".
16. The caveat lodged by the defendant will delay settlement of the sale of the Property. The proceeds of the sale of the Property will be insufficient to discharge the current debt of the defendant to the plaintiff. Accordingly, further delay in settlement of the sale will cause loss to the plaintiff.
17. On 4 June 2007 the solicitors for the plaintiff wrote to the defendant requesting the withdrawal of the caveat. A copy of this letter is exhibited to me at the time of swearing this affidavit and marked "KD-7".



18. As at the time of swearing this affidavit, 11am on 6 June 2007, the defendant has not responded to the letter from the plaintiff's solicitors.
19. To avoid delaying settlement of the sale of the Property and further loss to the plaintiff, I respectfully ask this Honourable Court to make the orders sought in the Summons.

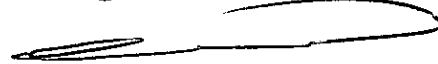
SWORN 6th June 2007

At SYDNEY

Signature of deponent



Signature of witness



Name of witness

Gary Koning

Capacity of witness

Solicitor

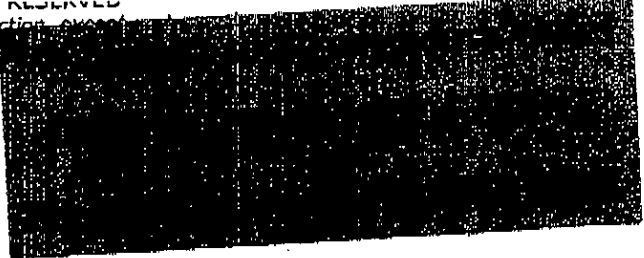
Level 9, 123 Pitt St.

Sydney 2000 NSW

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MS:CAT

THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION



HIDDEN J

WEDNESDAY 15 NOVEMBER 2006

013403/06 - PERPETUAL LIMITED v FIONA CAROLINE CRISTIAN

JUDGMENT re notice of motion

HIS HONOUR: The plaintiff has issued a statement of claim in this court seeking possession of a property and judgment for money outstanding on a loan contract. The defendant and her husband are said to be parties to the loan contract, which was signed on 25 August 2005. In addition, the defendant, as the registered proprietor of the relevant property, signed a mortgage on 20 September 2005 securing the amount of the loan and that mortgage contains the conventional term providing for a right of ejectment upon default.

The defendant has filed a defence which pleads the general issue but admits that no payments have ever been made under the loan contract. She has also filed a cross-claim, the effect of which is this, that the loan was negotiated through a broker but the contract which she and her husband signed does not reflect the nature of the loan which was sought. The defendant when the matter was last before me relied upon an affidavit of her husband, to which a large amount of documentary material was annexed. That has been supplemented today by further evidence on

MS:CAT

affidavit from the defendant herself and from the broker, Mr Hartney, all of which is consistent with the assertion that the loan contract signed was indeed not consistent with the loan that was sought. This may raise an issue as to whether the defendant has recourse against any other person or organisation arising from the circumstances in which the loan document and the mortgage came to be signed, and there may indeed be an issue as to the amount said now to be outstanding under the contract.

That said, in the circumstances, the plaintiff seeks summary judgment for possession of the property and also for judgment in the amount outstanding. As to that, however, Mr Golledge, who appears for the plaintiff, realistically acknowledged that there may be an issue about the amount and what is pressed this morning is summary judgment for possession of the property. That application is pressed upon the basis that nothing in the defence or cross-claim filed by the defendant or, indeed, in any of the evidence upon which she relies raises any triable issue in opposition to possession.

That submission, in my view, is sound. The simple fact is that a loan contract was entered into for a certain amount of principal at a certain interest rate. The mortgage was signed consistent with that loan contract and to secure repayment of the loan with interest. It is common ground that there has been default in that no

MS:CAT

payment has ever been made and, in those circumstances, the plaintiff is entitled to summary judgment for possession.

It is not for me to determine what is to happen about the claim for the amount outstanding or in respect of any defence or cross-claim which the defendant might have in respect of that amount. The defendant filed motions this morning seeking to join certain other parties to the proceedings. Again, it is not for me to determine the merit of those motions, nor am I in a position to determine them this morning in the present circumstances and on the limited material I have.

The defendant sought an opportunity for more time to research the circumstances of the loan and to research the relevant law in answer to the present motion. However, in light of the history of the matter, I am not prepared to allow any further adjournment. This motion has taken long enough as it is to be brought to hearing.

(Short minutes of order handed up by Mr Golledge. For submissions re the short minutes and costs see transcript page 14 line 34 to page 16 line 32.)

HIS HONOUR: I make orders in terms of paragraphs A and B of the short minutes supplied to me by counsel for the plaintiff, which I shall sign and date today, being 15 November 2006. The defendant is to pay the plaintiff's costs of the motion.

(For submissions re costs, listing the matter

.15/11/06

MS:CAT

before the Registrar and matters concerning the writ see transcript page 16 line 37 to page 18 line 58)

HIS HONOUR: I direct that the matter be listed for further directions before a Registrar at 9 am on Wednesday, 29 November 2006.

0o0

JUDGMENT

COURT DETAILS

Court Supreme Court of New South Wales
Division Common Law Division
List Possession List
Registry Sydney
Case number 13403/06

TITLE OF PROCEEDINGS

First plaintiff Perpetual Limited, formerly known as Perpetual Trustees Australia Limited
ACN 000 431 837

Number of plaintiffs 1

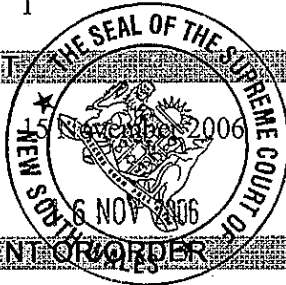
First defendant Fiona Cristian

Number of defendants 1

DATE OF JUDGMENT

Date made or given

Date entered



TERMS OF JUDGMENT OR ORDER

1. The Defendant give the Plaintiff possession of the land comprised in Certificate of Title, Folio Identifier 54/755903 commonly known as 40 Warrain Crescent, Currarong in the State of New South Wales.
2. The Plaintiff have leave to issue a Writ of Possession in respect of the land comprised in Certificate of Title, Folio Identifier 54/755903 commonly known as 40 Warrain Crescent, Currarong in the State of New South Wales.
3. The Writ of Possession stay in the sheriff's office for 21 days before execution.
4. The Defendant pay the Plaintiff's costs of the motion for summary judgment as agreed or assessed.
5. The matter be listed before the Registrar for further directions on 29 November 2006 at 9am.

SIGNATURE

Court seal

Signature

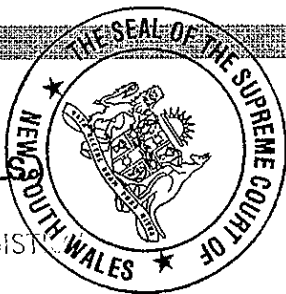
K. Yau (LS)

Capacity

DEPUTY REGISTRAR

Date

16 NOV 2006



PARTY DETAILS

Parties to the proceedings

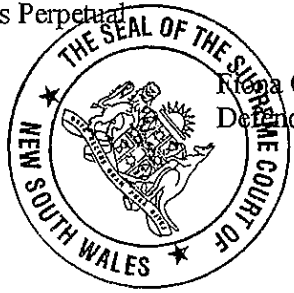
PLAINTIFF

DEFENDANT

Perpetual Limited, formerly known as Perpetual
Trustees Australia Limited

ACN 000 431 837

Plaintiff



Ritona Cristian
Defendant

EXHIBIT "KD - 3"

COURT DETAILS

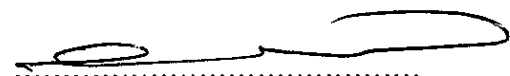
Court Supreme Court of New South Wales
Division Equity Division
List
Registry Sydney
Case number

TITLE OF PROCEEDINGS

First plaintiff **Perpetual Limited, formerly known as Perpetual Trustees Australia Limited**
[ACN 000 431 827]
Number of plaintiffs 1
First defendant **Fiona Caroline Cristian**
Number of defendants 1

This is the exhibit marked "KD-3" referred to in the affidavit of Kylie Davies sworn before me

on 6 June 2007.


.....
~~Solicitor / Justice of the Peace~~

IN THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

CA 40839/06

MASON P
HANDLEY AJA

Monday 2 April 2007

FIONA CAROLINE CRISTIAN v PERPETUAL LIMITED, FORMERLY KNOWN
AS PERPETUAL TRUSTEE AUSTRALIA LIMITED, (ACN 000431827)

JUDGMENT

1 **MASON P:** We have heard fuller than usual argument in support of an application for leave to appeal. The argument has been presented in written form and through the oral submissions of Mr Cristian, who is the husband of the claimant and has spoken on her behalf.

2 The matter before the court today is whether to grant leave to appeal against the orders pronounced by Hidden J on 15 November 2006. His Honour ordered that the defendant give the plaintiff possession of certain land and that the plaintiff have leave to issue a writ of possession. He made an order for costs. He directed that the matter be listed for further directions before the Registrar for the outstanding matters that were to be addressed in the proceedings.

3 In his reasons Hidden J stated that,

“The simple fact is that a loan contract was entered into for a certain amount of principal at a certain interest rate. The mortgage was signed consistent with that loan contract and to secure repayment of the loan with interest. It is common ground that there has been default in that no payment has ever been made, and in those circumstances, the plaintiff is entitled to summary judgment for possession.”

- 4 It was clear to his Honour, as it is clear to me, that the claimant wants to agitate a wide ranging set of issues against the opponent and, it would appear, third parties, including the broker/agent who was involved in the transaction.
- 5 Mr Cristian has made allegations of fraud, unconscionable dealing and misrepresentation. Some of these appear to be foreshadowed in the document called, First Cross-Claim Cross-Summons, dated 30 October 2006 that was before Hidden J. Other matters were foreshadowed in affidavits that were read before his Honour and no doubt in the submissions put to his Honour.
- 6 It is not disputed that a mortgage was signed and registered. It is not disputed that various formalities under the **Conveyancing Act 1919** concerning the exercise of the mortgagee's rights were complied with. It is not disputed that the mortgagee paid money and arranged for the discharge of an existing mortgage over the subject property.
- 7 In *Inglis v Commonwealth Trading Bank of Australia* (1972) 126 CLR 161 at 164-5, Walsh J gave a judgment which received the approval of the High Court on appeal (see 126 CLR at 168-9). His Honour said this:

"In my opinion, the authorities which I have been able to examine establish that for the purpose of the application of the general rule to which I have referred, nothing short of actual payment is regarded as sufficient to extinguish a mortgage debt. If the debt has not been actually paid, the Court will not, at any rate as a general rule, interfere to deprive the mortgagee of the benefit of his security, except upon terms that an equivalent safeguard is provided to him, by means of the plaintiff bringing in an amount sufficient to meet what is claimed by the mortgagee to be due.

The benefit of having a security for a debt would be greatly diminished if the fact that a debtor has raised claims for damages against the mortgagee were allowed to prevent any enforcement of the security until after the litigation of those claims had been completed."

- 8 Mr Justice Walsh did not state an absolute rule and one cannot overlook that fact. Nevertheless, I see nothing on what has been put to us today or was put before Hidden J to take the case outside of the general principle.
- 9 Mr Cristian has indicated that various claims are intended to be brought, presumably in what remains of the present proceedings in the Common Law Division. The order and judgment of Hidden J does not prevent those matters being litigated in the Supreme Court.
- 10 In my view, his Honour would have been in error if he had not granted summary judgment for possession in the circumstances here prevailing.
- 11 The dispute that is foreshadowed as to the possible misunderstanding or possible misrepresentation - I stress possible - as to the full effect of the loan contract cannot remove the fact that the document was signed and registered and became the basis of the relationship between the parties.
- 12 If a claim based on misrepresentation or fraud or unconscientious dealing is to be litigated then so be it. But the law, as I understand it, is clear that a party that succeeds on such a claim will be required to give counter-restitution and to repay any benefit that was received in consequence of the transaction that he or she seeks to impugn. The rule stated by Walsh J is in one sense an aspect of that more fundamental principle.
- 13 Mr Cristian foreshadowed arguments based upon the nature of legal tender in this country. I do not consider those arguments have any merit. They certainly raise nothing relevant to the matter that is before this Court.
- 14 I propose that leave to appeal against the orders of Hidden J made on 15 November 2006 be refused and that the summons before this court be dismissed with costs.
- 15 **HANDLEY AJA:** I agree.

16 **MASON P:** That is the order of the court.

I hereby certify that this and the preceding 3 pages are a true copy of the reasons for the judgment herein of his Honour Justice Mason and of the Court.

3/4/07
Date


Associate.

EXHIBIT "KD - 4"

COURT DETAILS

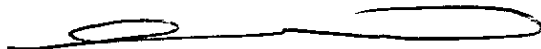
Court Supreme Court of New South Wales
 Division Equity Division
 List
 Registry Sydney
 Case number

TITLE OF PROCEEDINGS

First plaintiff **Perpetual Limited, formerly known as Perpetual Trustees Australia Limited**
 [ACN 000 431 827]
 Number of plaintiffs 1
 First defendant **Fiona Caroline Cristian**
 Number of defendants 1

This is the exhibit marked "KD-4" referred to in the affidavit of Kylie Davies sworn before me

on 6 June 2007.



.....
 Solicitor / ~~Justice of the Peace~~

Contract for the sale of land – 2005 edition


20

TERM	MEANING OF TERM
Vendor's agent	CULBURRA FIRST NATIONAL REAL ESTATE 179 Prince Edward Avenue, Culburra Beach, NSW 2540 Tel: (02) 4447 3600 Fax: (02) 4447 3699 Ref: Brian Muller
Co-agent	Not Applicable
Vendor	PERPETUAL LIMITED (FORMERLY KNOWN AS PERPETUAL TRUSTEES AUSTRALIA LIMITED) A.C.N 000 431 827 of 39 Hunter Street, Sydney NSW, 2000 exercising its power of sale pursuant to registered mortgage AB812274 dated 20 September 2005 from FIONA CAROLINE CRISTIAN
Vendor's Solicitor	DIBBS ABBOTT STILLMAN , Level 8, 123 Pitt Street, Sydney NSW 2000. DX 101 Sydney. Tel: (02) 8233 9500. Fax: (02) 8233 9555. Ref: AJB:SMA.3360461
Completion date	30 th day after the contract date (clause 15)
Land (Address, plan details and title reference)	40 Warrain Crescent, Currarong NSW 2540 Lot 54 Deposited Plan 755903 Folio Identifier 54/755903
Improvements	<input checked="" type="checkbox"/> VACANT POSSESSION <input type="checkbox"/> subject to existing tenancies <input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input checked="" type="checkbox"/> home unit <input checked="" type="checkbox"/> carspace <input type="checkbox"/> none <input type="checkbox"/> other:
Attached copies	<input checked="" type="checkbox"/> Documents in the List of Documents as marked or as numbered: <input type="checkbox"/> Other documents:

A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.

Inclusions	<input type="checkbox"/> blinds	<input type="checkbox"/> curtains	<input type="checkbox"/> insect screens	<input type="checkbox"/> stove
	<input type="checkbox"/> built-in wardrobes	<input type="checkbox"/> dishwasher	<input type="checkbox"/> light fittings	<input type="checkbox"/> pool equipment
	<input type="checkbox"/> clothes line	<input type="checkbox"/> fixed floor coverings	<input type="checkbox"/> range hood	<input type="checkbox"/> TV antenna
	<input checked="" type="checkbox"/> other: refer to special condition 40			
Exclusions				
Purchaser				
Purchaser's solicitor				
Price	\$ 665,000.00			
Deposit	\$66,500.00 (10% of the price, unless otherwise stated)			
Balance	\$598,500.00			
Contract date	12th May 2007		(if not stated, the date this contract was made)	

FULL SIGNATURES ON PAGE 1A

 _____

GST AMOUNT (optional)
The price includes
GST of: \$

Purchaser's initials JOINT TENANTS tenants in common in unequal shares Vendor's initials

Tax information (the parties promise this is correct as far as each party is aware)

Vendor duty is payable	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes in full	<input type="checkbox"/> yes to an extent
Deposit can be used to pay vendor duty	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	
Land tax is adjustable	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	
GST: Taxable supply	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes in full	<input type="checkbox"/> yes to an extent
Margin scheme will be used in making the taxable supply	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	

This sale is not a taxable supply because (one or more of the following may apply) the sale is:

- not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))
- by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))
- GST-free because the sale is the supply of a going concern under section 38-325
- GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-O
- input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

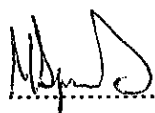
HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address and telephone number

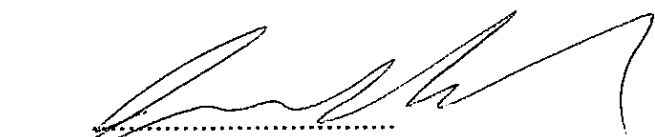
VENDOR

Signed for or on behalf of PERPETUAL LIMITED (FORMERLY KNOWN AS PERPETUAL TRUSTEES AUSTRALIA LIMITED) A.C.N 000 431 827

PURCHASER

Signed by the purchaser in the presence of:

) 
)
)
)
)


.....
Witness

List of Documents

General	Strata or community title (clause 23 of the contract)
<input checked="" type="checkbox"/> 1 property certificate for the land <input checked="" type="checkbox"/> 2 plan of the land <input type="checkbox"/> 3 unregistered plan of the land <input type="checkbox"/> 4 plan of land to be subdivided <input type="checkbox"/> 5 document that is to be lodged with a relevant plan <input checked="" type="checkbox"/> 6 section 149(2) certificate (Environmental Planning and Assessment Act 1979) <input checked="" type="checkbox"/> 7 section 149(5) information included in that certificate <input type="checkbox"/> 8 sewerage connections diagram <input checked="" type="checkbox"/> 9 sewer mains diagram <input type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract <input type="checkbox"/> 11 section 88G certificate (positive covenant) <input type="checkbox"/> 12 survey report <input type="checkbox"/> 13 section 317A certificate (certificate of compliance) <input type="checkbox"/> 14 building certificate given under <i>legislation</i> <input type="checkbox"/> 15 insurance certificate (Home Building Act 1989) <input type="checkbox"/> 16 brochure or note (Home Building Act 1989) <input type="checkbox"/> 17 section 24 certificate (Swimming Pools Act 1982) <input type="checkbox"/> 18 lease (with every relevant memorandum or variation) <input type="checkbox"/> 19 other document relevant to tenancies <input type="checkbox"/> 20 old system document <input type="checkbox"/> 21 Crown tenure card <input type="checkbox"/> 22 Crown purchase statement of account <input type="checkbox"/> 23 Statutory declaration regarding <i>vendor duty</i>	<input type="checkbox"/> 24 property certificate for strata common property <input type="checkbox"/> 25 plan creating strata common property <input type="checkbox"/> 26 strata by-laws not set out in <i>legislation</i> <input type="checkbox"/> 27 strata development contract or statement <input type="checkbox"/> 28 strata management statement <input type="checkbox"/> 29 leasehold strata - lease of lot and common property <input type="checkbox"/> 30 property certificate for neighbourhood property <input type="checkbox"/> 31 plan creating neighbourhood property <input type="checkbox"/> 32 neighbourhood development contract <input type="checkbox"/> 33 neighbourhood management statement <input type="checkbox"/> 34 property certificate for precinct property <input type="checkbox"/> 35 plan creating precinct property <input type="checkbox"/> 36 precinct development contract <input type="checkbox"/> 37 precinct management statement <input type="checkbox"/> 38 property certificate for community property <input type="checkbox"/> 39 plan creating community property <input type="checkbox"/> 40 community development contract <input type="checkbox"/> 41 community management statement <input type="checkbox"/> 42 document disclosing a change of by-laws <input type="checkbox"/> 43 document disclosing a change in a development or management contract or statement <input type="checkbox"/> 44 document disclosing a change in boundaries <input type="checkbox"/> 45 certificate under Management Act – section 109 (Strata Schemes) or section 26 (Community Land)

WARNINGS

- Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, decisions, licences, notices, orders, proposals or rights of way involving

AGL Gas Networks Limited	Government Business & Government Procurement	Public Works Dept
Council	Heritage Office	Roads & Traffic Authority
County Council	Infrastructure Planning and Natural Resources	Rural Lands Protection Board
East Australian Pipeline Limited	Land & Housing Corporation	Sustainable Energy Development
Education & Training Dept	Mine Subsidence Board	Telecommunications authority
Electricity authority	Owner of adjoining land	Water, sewerage or drainage authority
Environment & Conservation Dept	Primary Industries Department	
Fair Trading	RailCorp	

If you think that any of these matters affects the property, tell your solicitor.
- A lease may be affected by the Agricultural Tenancies Act 1990, the Residential Tenancies Act 1987 or the Retail Leases Act 1994.
- If any purchase money is owing to the Crown, it may become payable when the transfer is registered.
- If a consent to transfer is required under legislation, see clause 27 as to the obligations of the parties.
- The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
- The purchaser will usually have to pay stamp duty on this contract. The sale will also usually be a vendor duty transaction. If duty is not paid on time, a party may incur penalties.
- If the purchaser agrees to the release of deposit any rights in relation to the land (for example, the rights mentioned in clause 2.8) may be subject to the rights of other persons such as the vendor's mortgagee.
- The purchaser should arrange insurance as appropriate.

DISPUTES

If you get into a dispute with the other party, the Law Society and Real Estate Institute encourage you to use informal procedures such as negotiation, independent expert appraisal or mediation (for example mediation under the Law Society Mediation Guidelines).

AUCTIONS

Regulations made under the Property Stock and Business Agents Act 2002 prescribe a number of conditions applying to sales by auction.

**CERTIFICATE
PURSUANT TO SECTION 66W OF THE CONVEYANCING ACT, 1919**

I, (full name)

of (address)

certify as follows:

1. I am a solicitor / barrister / licensed conveyancer (*delete where inapplicable*) currently admitted to practice in New South Wales or another State or Territory of Australia.
2. I am giving this certificate in accordance with Section 66W of the Conveyancing Act 1919 with reference to a contract for the sale of the property referred to in **Item 1** of the Schedule below ("Property") from the Vendor referred to in **Item 2** of the Schedule below ("Vendor") to the Purchaser referred to in **Item 3** of the Schedule below ("Purchaser") in order that there is no cooling off period in relation to that contract.
3. I do not act for the Vendor (or any of them) and am not employed in the legal practice of a solicitor acting for the Vendor (or any of them) nor am I a member or employee of a firm of which a solicitor acting for the Vendor (or any of them) is a member or employee.
4. I have explained to the Purchaser (and where the Purchaser comprises more than one person or party, to each of them; and where the Purchaser or any of them is a corporation, to an officer of the corporation or a person involved in the management of its affairs):
 - (a) the effect of the contract for the purchase of the Property;
 - (b) the nature of this certificate;
 - (c) the effect of giving this certificate to the Vendor, i.e. that there is no cooling off period in relation to the contract.

SCHEDULE

Item 1 (Property) : Lot 54 in Deposited Plan 755903
known as 40 Warrain Crescent, Currarong

Item 2 (Vendor) : **PERPETUAL LIMITED (FORMERLY KNOWN AS PERPETUAL TRUSTEES AUSTRALIA LIMITED)** ACN 000 431 827 of Level 12, 123 Pitt Street, Sydney, NSW, 2000, exercising its Power of Sale pursuant to registered Mortgage No. AB812274 dated 20 September 2005 from FIONA CAROLINE CRISTIAN

Item 3 (Purchaser) :
(insert full name/s)

DATED this day of 2007

.....
(Signature)

SPECIAL PROVISIONS attached to and forming part of Contract for Sale of Land between **PERPETUAL LIMITED**, ACN 000 431 827, of Level 12, 123 Pitt Street, Sydney exercising its Power of Sale pursuant to registered Mortgage No. AB812274 dated 20 September 2005 from **FIONA CAROLINE CRISTIAN** (Vendor) AND (Purchaser)
 DATED THE _____ DAY OF _____ 2007

WARNING SMOKE ALARMS

The owners of certain types of buildings and strata lots must have smoke alarms (or in certain cases heat alarms) installed in the building or lot in accordance with regulations under the Environmental Planning and Assessment Act 1979. It is an offence not to comply. It is also an offence to remove or interfere with a smoke alarm or heat alarm. Penalties apply.

30. More Interpretation

30.1 In this contract unless the context otherwise requires:

- the term "purchaser's solicitor" or phrases referring to the solicitor for the purchaser include the person or entity named as the purchaser's solicitor or purchaser's representative in this contract; and
- a reference to any party to this contract or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns; and
- a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa; and
- a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation or regulations issued under, that legislation or legislative provision; and
- a reference to any gender includes all genders; and
- the singular includes the plural and vice versa; and
- a reference to any thing (including any right) includes a part of that thing; and
- where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

30.2 Time of day refers to the local time then applicable in Sydney, New South Wales.

30.3 Where a party is not permitted to make a claim or requisition in respect of a matter, neither can the party rescind or terminate or delay completion of this contract in respect of that matter.

30.4 If there is any inconsistency between clauses 1 – 29 and these special provisions, these provisions prevail.

30.5 If any provision of this contract is or becomes invalid or not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid or unenforceable provision will be and continue to be valid and enforceable in accordance with their terms.

30.6 Headings are for convenience of reference only and do not affect interpretation.

31 **Amendments to printed provisions**

The provisions of this contract specified in this clause are deemed amended as follows:

(a) **Settlement Cheque:** in clause 1 the definition of "settlement cheque" is deleted and replaced by the following:

"an unendorsed *cheque* made payable to the person to be paid and drawn on its own funds by a *bank* that carries on business in Australia or, if authorised in writing by the vendor or the vendor's *solicitor*, some other *cheque*;"

(b) **Investment of Deposit:** to clause 2.9 add:

"However, if this contract is completed but before completion one party has not (or where a party comprises two or more persons, all of them have not) furnished the depositholder with their tax file number or exemption from quotation of a tax file number, all net interest after the deductions referred to is to be paid to the other party".

(c) **Claims:** delete clauses 7.2.1, 7.2.2 and 7.2.5.

(d) **Possession before completion:** to clause 18 add:

"18.8 If any fee or rent payable by the purchaser is in arrears for a period exceeding 7 days, or if the purchaser does not comply with any part of this clause, immediately after the vendor serves notice requiring the purchaser to vacate the property the purchaser must do so."

(e) **Facsimile:** delete clause 20.6.5 and substitute:

"20.6.5 served if it is sent by fax to the party's solicitor. The document will be deemed to have been duly served when the transmission has been completed except where:

(a) the sender's machine indicates a malfunction in transmission or the recipient immediately notifies the sender of an incomplete transmission, in which case the document will be deemed not to have been served; or

(b) the transmission is made on a day which is not a business day or after 5.00pm on a business day, in which cases the document will be deemed to have been served at 9.00am on the next business day;"

(f) **Strata / Community Title**

(i) From clause 23.9.3 delete "or before completion".

(ii) In clause 23.17, after "authorises the purchaser", insert the words "his solicitor or agent".

(iii) After clause 23.18 add:

"23.19 In clauses 10 and 32 where the context permits 'the property' includes the parcel and any part thereof."

32. **Purchaser's acknowledgements**

Subject to Section 52A(2)(b) of the Conveyancing Act, 1919 and the regulations under that Act the purchaser acknowledges and agrees that:

- (a) the purchaser purchases the property:
 - (i) relying on the purchaser's own knowledge, inspection and enquiries; and
 - (ii) in its existing condition and state of repair and subject to all infestations and dilapidation; and
- (b) any warranties by or on behalf of the vendor, express or implied, as to any purpose for which the property, or for which any building which is or may be erected on the property, can be used are expressly negated; and
- (c) the purchaser cannot make a claim or requisition in respect of:
 - (i) the presence on the property of any sewer, manhole, vent, mains, connections, wires, pipes, conduits, channels or distributors with respect to any service as referred to in brackets in **clause 10.1.2**; or
 - (ii) any roof and/or yardwater drainage or pipe being connected to the sewer; or
 - (iii) whether or not any improvements have been constructed over or adjacent to the sewer main or other installations of Sydney Water Corporation (or other competent authority) and whether or not any approvals for such construction have been obtained and whether or not any conditions of any approval have been complied with.

33. Death, mental illness, liquidation, etc

Without in any manner negating limiting or restricting any rights or remedies which would have been available to the vendor at law or in equity had this clause not been included, should the purchaser (or, where the purchaser comprises more than one person, any of them) prior to completion:

- (a) die or become mentally ill then the vendor can rescind by serving notice on the purchaser's solicitor; or
- (b) as debtor, enter into any composition under Part X of the Bankruptcy Act 1966 (Commonwealth) or, being a body corporate, resolve to go into liquidation or be subject to an application for its winding up made to the Court or enter into any compromise or arrangement with its creditors under the Corporations Law or other applicable law or should any liquidator, provisional liquidator, receiver, receiver and manager or official manager be appointed in respect of the purchaser, then the purchaser shall immediately and without notice be in breach of this contract in an essential respect.

34. Estate Agent and commission

The purchaser warrants that the purchaser was not introduced to the vendor or the property by any real estate agent (or employee of or person connected with a real estate agent) other than the vendor's agent(s) (if any) named in this contract. The purchaser indemnifies the vendor against any claim for commission which might be made by any agent resulting from an introduction forming a breach of such warranty, and also against all actions, proceedings, expenses and legal costs and disbursements (on a solicitor and client basis) in respect of any such claim. It is agreed that this indemnity is a continuing indemnity not merging on completion.

35. Special completion address

For the purpose of **clause 16.11.1** the special completion address is:

- (a) such place in the Sydney CBD as notified by the vendor to the purchaser; or

- (b) if the vendor has a first mortgagee, such place where the first mortgagee would discharge the mortgage, as notified by the vendor to the purchaser.

36. Notice to Complete

- 36.1 A notice to complete served by the vendor can require completion to be effected by a time and on a date which date is **FOURTEEN (14)** days or more (as specified in the notice) after the date of service of the notice. The parties agree that such notice is sufficient at law and in equity to make time of the essence in respect of the time (both the date and the hour of the day) specified in the notice.
- 36.2 The parties further agree that a period of at least **FOURTEEN (14)** days from (but excluding) the date of service of the notice to (and including) the date for completion specified in the notice will be a sufficient and reasonable period for the party served to complete this contract, and will be a sufficient and reasonable period as aforesaid even though that period includes (but does not expire on) any days which are not business days.
- 36.3 The vendor can at any time withdraw his notice to complete without prejudice to his continuing right to give any further such notice.

37. Interest

- 37.1 In this clause "non-interest day" means any business day after the completion date during the whole of which business day the vendor is unable or unwilling to complete this contract and the purchaser is able and willing to complete.
- 37.2 If completion is not effected on or before the completion date then, without prejudice to any other remedy of the vendor and in addition to all other amounts payable by the purchaser to the vendor under this contract, the purchaser must pay to the vendor on completion interest on the **balance of the purchase price** at the rate of **TEN (10)** per cent per annum.
- 37.3 The interest accrues from day to day from (but excluding) the completion date until (and including) the date of actual completion, but no such interest is payable in respect of any non-interest day, nor in respect of any non-business day where the immediately preceding business day is a non-interest day.
- 37.4 It is an essential term of this contract that such interest is paid to the vendor on completion and the purchaser is not entitled to require the vendor to complete unless such interest is so paid.

38 Limitation of Liability

- 38.1 The Vendor as mortgagee exercising a power of sale enters into this Contract for Sale only as trustee of PUMA ("Trust"). Any obligation or liability of the mortgagee under or in any way connected with this Contract for Sale is limited to the extent to which the mortgagee is actually indemnified for that obligation or liability out of the assets of the Trust.
- 38.2 This limitation will not apply only to the extent that the mortgagee is not actually indemnified for an obligation or liability because of its own fraud, negligence or breach.

39 Deposit

Notwithstanding any other provisions contained in this contract, the Purchaser acknowledges that on exchange of contracts the deposit is to be delivered to the Vendor's solicitor to be held in trust pending completion.

40 No Inclusions

The Property is sold without inclusions. The Vendor as a mortgagee exercising a power of sale does not warrant that it can pass title to any inclusions that may exist and the Purchaser takes any inclusions

acknowledging that no objection, requisition or claim for compensation may be made in respect of them and that no title may pass to them.

41 **Drainage Diagrams**

- 41.1 Annexed to this contract is a letter from Shoalhaven City Council, dated 21 March 2007 ('Letter') and a Sewer Main Location Diagram ('Diagram').
- 41.2 The Purchaser cannot make a claim or requisition in respect of any matter disclosed or referred to in the Letter and/or Diagram.

IMPORTANT NOTICE TO VENDORS AND PURCHASERS

Before signing this contract you should ensure that you understand your rights and obligations, some of which are not written in this contract but are implied by law.

For example, as purchaser you should be satisfied that finance will be available at the time of completing the purchase (even if settlement might occur many months after signing this contract - in particular, if you are buying off the plan).

COOLING OFF PERIOD (PURCHASER'S RIGHTS)

1. This is the statement required by section 66X of the Conveyancing Act 1919 and applies to a contract for the sale of residential property.
2. The purchaser may rescind the contract at any time before 5 p.m. on the fifth business day after the day on which the contract was made, EXCEPT in the circumstances listed in paragraph 3.
3. There is NO COOLING OFF PERIOD:
 - (a) if, at or before the time the contract is made, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W of the Act; or
 - (b) if the property is sold by public auction; or
 - (c) if the contract is made on the same day as the property was offered for sale by public auction but passed in; or
 - (d) if the contract is made in consequence of the exercise of an option to purchase the property, other than an option that is void under section 66ZG of the Act.
4. A purchaser exercising the right to cool off by rescinding the contract will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser as a deposit under the contract and the purchaser is entitled to a refund of any balance.

The vendor sells and the purchaser buys the *property* for the price under these provisions instead of Schedule 3 Conveyancing Act 1919, subject to any *legislation* that cannot be excluded.

1 Definitions (a term in italics is a defined term)

In this contract, these terms (in any form) mean -

<i>adjustment date</i>	the earlier of the giving of possession to the purchaser or completion;
<i>bank</i>	a bank as defined in the Banking Act 1959, the Reserve Bank or a State bank;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>depositholder</i>	vendor's agent (or if no vendor's agent is named in this contract, the vendor's <i>solicitor</i>);
<i>document of title</i>	document relevant to the title or the passing of title;
<i>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in section 4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>legislation</i>	an Act or a by-law, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the vendor and the purchaser;
<i>property</i>	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and drawn on its own funds by - <ul style="list-style-type: none"> ● a <i>bank</i>; or ● a building society, credit union or other FCA institution as defined in Cheques Act 1986; that carries on business in Australia; or if authorised in writing by the vendor or the vendor's <i>solicitor</i> , some other <i>cheque</i> ;
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice <i>served</i> by the <i>party</i> ;
<i>terminate</i>	terminate this contract for breach;
<i>vendor duty</i>	vendor duty imposed under Chapter 4 of the Duties Act 1997;
<i>within</i>	in relation to a period, at any time before or during the period;
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the <i>property</i> or any adjoining footpath or road.

2 Deposit and other payments before completion

- 2.1 The purchaser must pay the deposit to the *depositholder* as stakeholder.
- 2.2 *Normally*, the purchaser must pay the deposit on the making of this contract, and this time is essential.
- 2.3 If this contract requires the purchaser to pay any of the deposit by a later time, that time is also essential.

- 2.4 The purchaser can pay any of the deposit only by unconditionally giving cash (up to \$2,000) or a *cheque* to the *depositholder* or to the vendor, vendor's agent or vendor's *solicitor* for sending to the *depositholder*.
- 2.5 If any of the deposit is not paid on time or a *cheque* for any of the deposit is not honoured on presentation, the vendor can *terminate*. This right to *terminate* is lost as soon as the deposit is paid in full.
- 2.6 If the vendor accepts a bond or guarantee for the deposit, clauses 2.1 to 2.5 and 3 do not apply.
- 2.7 If the vendor accepts a bond or guarantee for part of the deposit, clauses 2.1 to 2.5 and 3 apply only to the balance.
- 2.8 If any of the deposit or of the balance of the price is paid before completion to the vendor or as the vendor directs, it is a charge on the land in favour of the purchaser until *termination* by the vendor or completion, subject to any existing right.
- 2.9 If each *party* tells the *depositholder* that the deposit is to be invested, the *depositholder* is to invest the deposit (at the risk of the *party* who becomes entitled to it) with a *bank*, credit union or permanent building society, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and financial institution charges and other charges.
- 3 Payment of vendor duty out of the deposit**
- 3.1 This clause applies only if this contract says the deposit can be used to pay vendor duty.
- 3.2 If the amount held by the *depositholder* (disregarding the value of any bond or guarantee) exceeds the amount of *vendor duty*, the *parties* direct the *depositholder* to release the amount of *vendor duty* on the following terms -
- 3.2.1 the *depositholder* is to draw a *cheque* ("the vendor duty cheque") in favour of the Office of State Revenue and in a form acceptable to the Office of State Revenue for payment of *vendor duty*;
- 3.2.2 the *depositholder* is not to draw that *cheque* earlier than 14 days before the completion date; and
- 3.2.3 the receipt of a letter from the vendor's *solicitor* requesting the vendor duty cheque will be sufficient authority for the *depositholder* to draw and release that cheque.
- 3.3 The vendor's *solicitor* will use the vendor duty cheque for the sole purpose of payment of the *vendor duty* relating to this transaction.
- 3.4 If this contract is not completed in circumstances that there is, or may be, no liability for *vendor duty* -
- 3.4.1 if the vendor duty cheque has been forwarded to the vendor's *solicitor* but has not been used to pay *vendor duty*, that cheque must be returned immediately to the *depositholder* for cancellation;
- 3.4.2 if the vendor duty cheque has been used to pay *vendor duty* -
- the amount of *vendor duty* is repayable upon demand;
 - the vendor must lodge an application for refund of *vendor duty*; and
 - the vendor irrevocably authorises the Office of State Revenue to pay to the *depositholder* the refund of *vendor duty*;
- 3.4.3 each *party* must do whatever else is necessary to ensure that the *party* whose funds were used to pay *vendor duty* receives the refund; and
- 3.4.4 rights under this clause continue even if the contract has been *rescinded* or *terminated*.
- 4 Transfer**
- 4.1 *Normally*, the purchaser must *serve* the form of transfer at least 14 days before the completion date.
- 4.2 If any information needed for the form of transfer is not disclosed in this contract, the vendor must *serve* it.
- 4.3 If the purchaser *serves* a form of transfer and the transferee is not the purchaser, the purchaser must give the vendor a direction signed by the purchaser personally for this form of transfer.
- 4.4 The vendor can require the purchaser to include a form of covenant or easement in the transfer only if this contract contains the wording of the proposed covenant or easement, and a description of the land benefited.
- 4.5 If this sale is exempt from *vendor duty* -
- 4.5.1 the vendor can (but does not have to) *serve* an application for exemption from *vendor duty* in the form satisfactory to the Office of State Revenue *within* 7 days after the contract date;
- 4.5.2 if that application is attached to this contract or has been provided to the purchaser before the contract date, the application is *served* on the contract date; and
- 4.5.3 if the vendor complies with clause 4.5.1 -
- the purchaser must have the form of transfer marked by the Office of State Revenue in relation to *vendor duty* before *serving* the form of transfer; and
 - on completion the vendor must pay to the purchaser \$33.
- 5 Requisitions**
- If the purchaser is or becomes entitled to make a *requisition*, the purchaser can make it only by *serving* it -
- 5.1 if it arises out of this contract or it is a general question about the *property* or title - *within* 21 days after the contract date;
- 5.2 if it arises out of anything *served* by the vendor - *within* 21 days after the later of the contract date and that *service*; and
- 5.3 in any other case - *within* a reasonable time.
- 6 Error or misdescription**
- 6.1 The purchaser can (but only before completion) claim compensation for an error or misdescription in this contract (as to the *property*, the title or anything else and whether substantial or not).
- 6.2 This clause applies even if the purchaser did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.
- 6.3 However, this clause does not apply to the extent the purchaser knows the true position.

7 Claims by purchaser

The purchaser can make a claim (including a claim under clause 6) before completion only by *servicing* it with a statement of the amount claimed, and if the purchaser makes one or more claims before completion -

- 7.1 the vendor can *rescind* if in the case of claims that are not claims for delay -
- 7.1.1 the total amount claimed exceeds 5% of the price;
 - 7.1.2 the vendor *serves* notice of intention to *rescind*; and
 - 7.1.3 the purchaser does not *serve* notice waiving the claims *within* 14 days after that *service*; and
- 7.2 if the vendor does not *rescind*, the *parties* must complete and if this contract is completed -
- 7.2.1 the lesser of the total amount claimed and 10% of the price must be paid out of the price to and held by the *depositholder* until the claims are finalised or lapse;
 - 7.2.2 the amount held is to be invested in accordance with clause 2.9;
 - 7.2.3 the claims must be finalised by an arbitrator appointed by the *parties* or, if an appointment is not made *within* 1 month of completion, by an arbitrator appointed by the President of the Law Society at the request of a *party* (in the latter case the *parties* are bound by the terms of the Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);
 - 7.2.4 the purchaser is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the purchaser;
 - 7.2.5 net interest on the amount held must be paid to the *parties* in the same proportion as the amount held; and
 - 7.2.6 if the *parties* do not appoint an arbitrator and neither *party* requests the President to appoint an arbitrator *within* 3 months after completion, the claims lapse.

8 Vendor's right to rescind

The vendor can *rescind* if -

- 8.1 the vendor is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
- 8.2 the vendor *serves* a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
- 8.3 the purchaser does not *serve* a notice waiving the *requisition within* 14 days after that *service*.

9 Purchaser's default

If the purchaser does not comply with this contract (or a notice under or relating to it) in an essential respect, the vendor can *terminate* by *servicing* a notice. After the *termination* the vendor can -

- 9.1 keep or recover the deposit (to a maximum of 10% of the price);
- 9.2 hold any other money paid by the purchaser under this contract as security for anything recoverable under this clause-
 - 9.2.1 for 12 months after the *termination*; or
 - 9.2.2 if the vendor commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and
- 9.3 sue the purchaser either -
 - 9.3.1 where the vendor has resold the *property* under a contract made *within* 12 months after the *termination*, to recover -
 - the deficiency on resale (with credit for any of the deposit kept or recovered and after allowance for any capital gains tax or goods and services tax payable on anything recovered under this clause); and
 - the reasonable costs and expenses arising out of the purchaser's non-compliance with this contract or the notice and of resale and any attempted resale; or
 - 9.3.2 to recover damages for breach of contract.

10 Restrictions on rights of purchaser

- 10.1 The purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of -
- 10.1.1 the ownership or location of any fence as defined in the Dividing Fences Act 1991;
 - 10.1.2 a service for the *property* being a joint service or passing through another property, or any service for another property passing through the *property* ('service' includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service);
 - 10.1.3 a wall being or not being a party wall in any sense of that term or the *property* being affected by an easement for support or not having the benefit of an easement for support;
 - 10.1.4 any change in the *property* due to fair wear and tear before completion;
 - 10.1.5 a promise, representation or statement about this contract, the *property* or the title, not set out or referred to in this contract;
 - 10.1.6 a condition, exception, reservation or restriction in a Crown grant;
 - 10.1.7 the existence of any authority or licence to explore or prospect for gas, minerals or petroleum;
 - 10.1.8 any easement or restriction on use the substance of either of which is disclosed in this contract or any non-compliance with the easement or restriction on use; or
 - 10.1.9 anything the substance of which is disclosed in this contract (except a caveat, charge, mortgage or writ).
- 10.2 The purchaser cannot *rescind* or *terminate* only because of a defect in title to or quality of the inclusions.
- 10.3 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* or require the vendor to change the nature of the title disclosed in this contract (for example, to remove a caution evidencing qualified title, or to lodge a plan of survey as regards limited title).

11 Compliance with work orders

- 11.1 *Normally*, the vendor must by completion comply with a *work order* made on or before the contract date and if this contract is completed the purchaser must comply with any other *work order*.
- 11.2 If the purchaser complies with a *work order*, and this contract is *rescinded* or *terminated*, the vendor must pay the expense of compliance to the purchaser.

12 Certificates and inspections

- The vendor must do everything reasonable to enable the purchaser, subject to the rights of any tenant -
- 12.1 to have the *property* inspected to obtain any certificate or report reasonably required;
- 12.2 to apply (if necessary in the name of the vendor) for -
- 12.2.1 any certificate that can be given in respect of the *property* under *legislation*; or
- 12.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *property* given under *legislation*, even if given after the contract date; and
- 12.3 to make 1 inspection of the *property* in the 3 days before a time appointed for completion.

13 Goods and services tax (GST)

- 13.1 In this clause, enterprise, input tax credit, margin scheme, supply of a going concern, tax invoice and taxable supply have the same meanings as in the *GST Act*.
- 13.2 *Normally*, if a *party* must pay the price or any other amount to the other *party* under this contract, GST is not to be added to the price or amount.
- 13.3 If under this contract a *party* must make an adjustment, pay an expense of another party or pay an amount payable by or to a third party (for example, under clauses 14 or 20.7) -
- 13.3.1 the *party* must adjust or pay on completion any GST added to or included in the amount; but
- 13.3.2 if this contract says this sale is a taxable supply, and payment would entitle the *party* to an input tax credit, the adjustment or payment is to be worked out by deducting any input tax credit to which the party receiving the adjustment is or was entitled and adding the *GST rate*.
- 13.4 If this contract says this sale is the supply of a going concern -
- 13.4.1 the *parties* agree the supply of the *property* is a supply of a going concern;
- 13.4.2 the vendor must, between the contract date and completion, carry on the enterprise conducted on the land in a proper and business-like way;
- 13.4.3 if the purchaser is not registered by the completion date, the *parties* must complete and the purchaser must pay on completion, in addition to the price, an amount being the price multiplied by the *GST rate* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows:
- if *within* 3 months of completion the purchaser *serves* a letter from the Australian Taxation Office stating the purchaser is registered, the *depositholder* is to pay the retention sum to the purchaser; but
 - if the purchaser does not *serve* that letter *within* 3 months of completion, the *depositholder* is to pay the retention sum to the vendor; and
- 13.4.4 if the vendor, despite clause 13.4.1, *serves* a letter from the Australian Taxation Office stating the vendor has to pay GST on the supply, the purchaser must pay to the vendor on demand the amount of GST assessed.
- 13.5 *Normally*, the vendor promises the margin scheme will not apply to the supply of the *property*.
- 13.6 If this contract says the margin scheme is to apply in making the taxable supply, the parties agree that the margin scheme is to apply to the sale of the property.
- 13.7 If this contract says the sale is not a taxable supply -
- 13.7.1 the purchaser promises that the *property* will not be used and represents that the purchaser does not intend the *property* (or any part of the *property*) to be used in a way that could make the sale a taxable supply to any extent; and
- 13.7.2 the purchaser must pay the vendor on completion in addition to the price an amount calculated by multiplying the price by the *GST rate* if this sale is a taxable supply to any extent because of -
- a breach of clause 13.7.1; or
 - something else known to the purchaser but not the vendor.
- 13.8 If this contract says this sale is a taxable supply in full and does not say the margin scheme applies to the *property*, the vendor must pay the purchaser on completion an amount of one-eleventh of the price if -
- 13.8.1 this sale is not a taxable supply in full; or
- 13.8.2 the margin scheme applies to the *property* (or any part of the *property*).
- 13.9 If this contract says this sale is a taxable supply to an extent -
- 13.9.1 clause 13.7.1 does not apply to any part of the *property* which is identified as being a taxable supply; and
- 13.9.2 the payments mentioned in clauses 13.7 and 13.8 are to be recalculated by multiplying the relevant payment by the proportion of the price which represents the value of that part of the *property* to which the clause applies (the proportion to be expressed as a number between 0 and 1). Any evidence of value must be obtained at the expense of the vendor.
- 13.10 *Normally*, on completion the vendor must give the recipient of the supply a tax invoice for any taxable supply by the vendor by or under this contract.
- 13.11 The vendor does not have to give the purchaser a tax invoice if the margin scheme applies to a taxable supply.

14 Adjustments

- 14.1 *Normally*, the vendor is entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax and all other periodic outgoings up to and including the *adjustment date* after which the purchaser will be entitled and liable.
- 14.2 The *parties* must make any necessary adjustment on completion.
- 14.3 If an amount that is adjustable under this contract has been reduced under *legislation*, the *parties* must on completion adjust the reduced amount.
- 14.4 The *parties* must adjust land tax for the year current at the *adjustment date* -
- 14.4.1 only if land tax has been paid or is payable for the year (whether by the vendor or by a predecessor in title) and this contract says that land tax is adjustable;
- 14.4.2 by adjusting the amount that would have been payable if at the start of the year -
- the person who owned the land owned no other land;
 - the land was not subject to a special trust or owned by a non-concessional company; and
 - if the land (or part of it) had no separate taxable value, by calculating its separate taxable value on a proportional area basis.
- 14.5 If any other amount that is adjustable under this contract relates partly to the land and partly to other land, the *parties* must adjust it on a proportional area basis.
- 14.6 *Normally*, the vendor can direct the purchaser to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so -
- 14.6.1 the amount is to be treated as if it were paid; and
- 14.6.2 the *cheque* must be forwarded to the payee immediately after completion (by the purchaser if the *cheque* relates only to the *property* or by the vendor in any other case).
- 14.7 If on completion the last bill for a water, sewerage or drainage usage charge is for a period ending before the *adjustment date*, the vendor is liable for an amount calculated by dividing the bill by the number of days in the period then multiplying by the number of unbilled days up to and including the *adjustment date*.
- 14.8 The vendor is liable for any amount recoverable for work started on or before the contract date on the *property* or any adjoining footpath or road.

15 Completion date

The *parties* must complete by the completion date and, if they do not, a *party* can serve a notice to complete if that *party* is otherwise entitled to do so.

16 Completion

● Vendor

- 16.1 On completion the vendor must give the purchaser any *document of title* that relates only to the *property*.
- 16.2 If on completion the vendor has possession or control of a *document of title* that relates also to other property, the vendor must produce it as and where necessary.
- 16.3 *Normally*, on completion the vendor must cause the legal title to the *property* (being an estate in fee simple) to pass to the purchaser free of any mortgage or other interest, subject to any necessary registration.
- 16.4 The legal title to the *property* does not pass before completion.
- 16.5 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgment fee to the purchaser, plus another 20% of that fee.
- 16.6 If the purchaser *serves* a land tax certificate showing a charge on any of the land, on completion the vendor must give the purchaser a land tax certificate showing the charge is no longer effective against the land.

● Purchaser

- 16.7 On completion the purchaser must pay to the vendor, by cash (up to \$2,000) or *settlement cheque*, the price (less any deposit paid) and any other amount payable by the purchaser under this contract (less any amount payable by the vendor to the purchaser under this contract).
- 16.8 If the vendor requires more than 5 *settlement cheques*, the vendor must pay \$10 for each extra *cheque*.
- 16.9 If any of the deposit is not covered by a bond or guarantee, on completion the purchaser must give the vendor an order signed by the purchaser authorising the *depositholder* to account to the vendor for the deposit.
- 16.10 On completion the deposit belongs to the vendor.

● Place for completion

- 16.11 *Normally*, the *parties* must complete at the completion address, which is -
- 16.11.1 if a special completion address is stated in this contract - that address; or
- 16.11.2 if none is stated, but a first mortgagee is disclosed in this contract and the mortgagee would usually discharge the mortgage at a particular place - that place; or
- 16.11.3 in any other case - the vendor's *solicitor's* address stated in this contract.
- 16.12 The vendor by reasonable notice can require completion at another place, if it is in NSW, but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee.
- 16.13 If the purchaser requests completion at a place that is not the completion address, and the vendor agrees, the purchaser must pay the vendor's additional expenses, including any agency or mortgagee fee.

17 Possession

- 17.1 *Normally*, the vendor must give the purchaser vacant possession of the *property* on completion.
- 17.2 The vendor does not have to give vacant possession if -

- 17.2.1 this contract says that the sale is subject to existing tenancies; and
 17.2.2 the contract discloses the provisions of the tenancy (for example, by attaching a copy of the lease and any relevant memorandum or variation).
- 17.3 *Normally*, the purchaser can claim compensation (before or after completion) or *rescind* if any of the land is affected by a protected tenancy (a tenancy affected by Part 2, 3, 4 or 5 Landlord and Tenant (Amendment) Act 1948).
- 18 Possession before completion**
- 18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.
 18.2 The purchaser must not before completion -
 18.2.1 let or part with possession of any of the *property*;
 18.2.2 make any change or structural alteration or addition to the *property*; or
 18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.
- 18.3 The purchaser must until completion -
 18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and
 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.
- 18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor -
 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and
 18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate mentioned in Schedule J of the Supreme Court Rules 1970.
- 18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.
 18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.
- 19 Rescission of contract**
- 19.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right -
 19.1.1 only by *servicing* a notice before completion; and
 19.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.
- 19.2 *Normally*, if a *party* exercises a right to *rescind* expressly given by this contract or any *legislation* -
 19.2.1 the deposit and any other money paid by the purchaser under this contract must be refunded;
 19.2.2 a *party* can claim for a reasonable adjustment if the purchaser has been in possession;
 19.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and
 19.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.
- 20 Miscellaneous**
- 20.1 The *parties* acknowledge that anything stated in this contract to be attached was attached to this contract by the vendor before the purchaser signed it and is part of this contract.
 20.2 Anything attached to this contract is part of this contract.
 20.3 An area, bearing or dimension in this contract is only approximate.
 20.4 If a *party* consists of 2 or more persons, this contract benefits and binds them separately and together.
 20.5 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in-writing that it is to be paid to another person.
 20.6 A document under or relating to this contract is -
 20.6.1 signed by a *party* if it is signed by the *party* or the *party's solicitor* (apart from a direction under clause 4.3);
 20.6.2 *served* if it is *served* by the *party* or the *party's solicitor*;
 20.6.3 *served* if it is *served* on the *party's solicitor*, even if the *party* has died or any of them has died;
 20.6.4 *served* if it is *served* in any manner provided in s170 of the Conveyancing Act 1919;
 20.6.5 *served* if it is sent by fax to the *party's solicitor*, unless it is not received;
 20.6.6 *served* on a person if it (or a copy of it) comes into the possession of the person; and
 20.6.7 *served* at the earliest time it is *served*, if it is *served* more than once.
- 20.7 An obligation to pay an expense of another *party* of doing something is an obligation to pay -
 20.7.1 if the *party* does the thing personally - the reasonable cost of getting someone else to do it; or
 20.7.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.
- 20.8 Rights under clauses 11, 13, 14, and 17 continue after completion, whether or not other rights continue.
 20.9 The vendor does not promise, represent or state that the purchaser has any cooling off rights.
 20.10 The vendor does not promise, represent or state that any attached survey report is accurate or current.
 20.11 A reference to any *legislation* includes a reference to any corresponding later *legislation*.
 20.12 Each *party* must do whatever is necessary after completion to carry out the *party's* obligations under this contract.
 20.13 Neither taking possession nor *servicing* a transfer of itself implies acceptance of the *property* or the title.
 20.14 The details and information provided in this contract (for example, on page 1) are, to the extent of each *party's* knowledge, true, and are part of this contract.
 20.15 Where this contract provides for choices, a choice in BLOCK CAPITALS applies unless a different choice is marked.
- 21 Time limits in these provisions**
- 21.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.
 21.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.

- 21.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.
- 21.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.
- 21.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clause 2 (deposit).
- 21.6 *Normally*, the time by which something must be done is fixed but not essential.
- 22 Foreign Acquisitions and Takeovers Act 1975**
- 22.1 The purchaser promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer under the Foreign Acquisitions and Takeovers Act 1975.
- 22.2 This promise is essential and a breach of it entitles the vendor to *terminate*.
- 23 Strata or community title**
- 23.1 This clause applies only if the land (or part of it) is a lot in a strata, neighbourhood, precinct or community scheme (or on completion is to be a lot in a scheme of that kind).
- 23.2 In this contract -
 'change', in relation to a scheme, means -
- a registered or registrable change from by-laws set out in this contract or set out in *legislation* and specified in this contract;
 - a change from a development or management contract or statement set out in this contract; or
 - a change in the boundaries of common property;
- 'common property' includes association property for the scheme or any higher scheme;
 'contribution' includes an amount payable under a by-law;
 'normal expenses', in relation to an owners corporation for a scheme, means normal operating expenses usually payable from the administrative fund of an owners corporation for a scheme of the same kind;
 'owners corporation' means the owners corporation or the association for the scheme or any higher scheme;
 'the *property*' includes any interest in common property for the scheme associated with the lot;
 'special expenses', in relation to an owners corporation, means its actual, contingent or expected expenses, except to the extent they are normal expenses, due to fair wear and tear, disclosed in this contract or covered by moneys held in the sinking fund.
- 23.3 Clauses 11, 14.8 and 18.4 do not apply to an obligation of the owners corporation, or to property insurable by it.
- 23.4 Clauses 14.4.2 and 14.5 apply but on a unit entitlement basis instead of an area basis.
- 23.5 The *parties* must adjust under clause 14.1 -
- 23.5.1 a regular periodic contribution;
- 23.5.2 a contribution which is not a regular periodic contribution but is disclosed in this contract; and
- 23.5.3 on a unit entitlement basis, any amount paid by the vendor for a normal expense of the owners corporation to the extent the owners corporation has not paid the amount to the vendor.
- 23.6 If a contribution is not a regular periodic contribution and is not disclosed in this contract -
- 23.6.1 the vendor is liable for it if it was levied before the contract date (unless it relates to work not started by that date), even if it is payable by instalments;
- 23.6.2 the vendor is also liable for it to the extent it relates to work started by the owners corporation before the contract date; and
- 23.6.3 the purchaser is liable for all other contributions levied after the *contract date*.
- 23.7 The vendor must pay or allow to the purchaser on completion the amount of any unpaid contributions for which the vendor is liable under clause 23.6.
- 23.8 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of -
- 23.8.1 an existing or future actual, contingent or expected expense of the owners corporation;
- 23.8.2 a proportional unit entitlement of the lot or a relevant lot or former lot, apart from a claim under clause 6; or
- 23.8.3 a past or future change in the scheme or a higher scheme.
- 23.9 However, the purchaser can *rescind* if -
- 23.9.1 the special expenses of the owners corporation at the later of the contract date and the creation of the owners corporation when calculated on a unit entitlement basis (and, if more than one lot or a higher scheme is involved, added together), less any contribution paid by the vendor, are more than 1% of the price;
- 23.9.2 in the case of the lot or a relevant lot or former lot in a higher scheme -
- a proportional unit entitlement for the lot is not disclosed in this contract; or
 - a proportional unit entitlement for the lot is disclosed in this contract but the lot has a different proportional unit entitlement at the contract date or at any time before completion; or
- 23.9.3 a change before the contract date or before completion in the scheme or a higher scheme substantially disadvantages the purchaser and is not disclosed in this contract.
- 23.10 The purchaser must give the vendor 2 copies of a proper form of notice of the transfer of the lot addressed to the owners corporation and signed by the purchaser.
- 23.11 The vendor must complete and sign 1 copy of the notice and give it to the purchaser on completion.
- 23.12 Each *party* can sign and give the notice as agent for the other.
- 23.13 The vendor must *serve* a certificate under section 109 Strata Schemes Management Act 1996 or section 26 Community Land Management Act 1989 in relation to the lot, the scheme or any higher scheme at least 7 days before the completion date.

- 23.14 The purchaser does not have to complete earlier than 7 days after *service* of the certificate and clause 21.3 does not apply to this provision.
- 23.15 On completion the purchaser must pay the vendor the prescribed fee for the certificate.
- 23.16 The vendor authorises the purchaser to apply for the purchaser's own certificate.
- 23.17 The vendor authorises the purchaser to apply for and make an inspection of any record or other document in the custody or control of the owners corporation or relating to the scheme or any higher scheme.
- 23.18 If a general meeting of the owners corporation is convened before completion -
- 23.18.1 if the vendor receives notice of it, the vendor must immediately notify the purchaser of it; and
- 23.18.2 the purchaser can require the vendor to appoint the purchaser (or the purchaser's nominee) to exercise any voting rights of the vendor in respect of the lot at the meeting.

24 Tenancies

- 24.1 If a tenant has not made a payment for a period preceding or current at the *adjustment date* -
- 24.1.1 for the purposes of clause 14.2, the amount is to be treated as if it were paid; and
- 24.1.2 the purchaser assigns the debt to the vendor on completion and will if required give a further assignment at the vendor's expense.
- 24.2 If a tenant has paid in advance of the *adjustment date* any periodic payment in addition to rent, it must be adjusted as if it were rent for the period to which it relates.
- 24.3 If the *property* is to be subject to a tenancy on completion or is subject to a tenancy on completion -
- 24.3.1 the vendor authorises the purchaser to have any accounting records relating to the tenancy inspected and audited and to have any other document relating to the tenancy inspected;
- 24.3.2 the vendor must *serve* any information about the tenancy reasonably requested by the purchaser before or after completion; and
- 24.3.3 *normally*, the purchaser can claim compensation (before or after completion) if -
- any of Parts 2 to 7 of the Retail Leases Act 1994 applies to the tenancy, unless this contract discloses that the tenancy commenced on or after 1 August 1994;
 - a disclosure statement required by the Act was not given when required;
 - such a statement contained information that was materially false or misleading;
 - a provision of the lease is not enforceable because of a non-disclosure in such a statement; or
 - the lease was entered into in contravention of the Act.
- 24.4 If the *property* is subject to a tenancy on completion -
- 24.4.1 the vendor must allow or transfer -
- any remaining bond money or any other security against the tenant's default (to the extent the security is transferable);
 - any money in a fund established under the lease for a purpose and compensation for any money in the fund or interest earned by the fund that has been applied for any other purpose;
 - any money paid by the tenant for a purpose that has not been applied for that purpose and compensation for any of the money that has been applied for any other purpose; and
- 24.4.2 if the security is not transferable, each *party* must do everything reasonable to cause a replacement security to issue for the benefit of the purchaser and the vendor must hold the original security on trust for the benefit of the purchaser until the replacement security issues;
- 24.4.3 the vendor must give to the purchaser -
- a proper notice of the transfer addressed to the tenant;
 - any certificate given under the Retail Leases Act 1994 in relation to the tenancy;
 - a copy of any disclosure statement given to the tenant under the Retail Leases Act 1994;
 - a copy of any document served on the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion; and
 - any document served by the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion;
- 24.4.4 the vendor must comply with any obligation to the tenant under the lease, to the extent it is to be complied with by completion; and
- 24.4.5 the purchaser must comply with any obligation to the tenant under the lease, to the extent that the obligation is disclosed in this contract and is to be complied with after completion.
- 24.5 Rights under this clause continue after completion, whether or not other rights continue.

25 Qualified title, limited title and old system title

- 25.1 This clause applies only if the land (or part of it) -
 25.1.1 is under qualified, limited or old system title; or
 25.1.2 on completion is to be under one of those titles.
- 25.2 The vendor must *serve* a proper abstract of title *within 7 days* after the contract date.
- 25.3 If an abstract of title or part of an abstract of title is attached to this contract or has been lent by the vendor to the purchaser before the contract date, the abstract or part is *served* on the contract date.
- 25.4 An abstract of title can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document -
 25.4.1 shows its date, general nature, names of parties and any registration number; and
 25.4.2 has attached a legible photocopy of it or of an official or registration copy of it.
- 25.5 An abstract of title -
 25.5.1 must start with a good root of title (if the good root of title must be at least 30 years old, this means 30 years old at the contract date);
 25.5.2 in the case of a leasehold interest, must include an abstract of the lease and any higher lease;
 25.5.3 *normally*, need not include a Crown grant; and
 25.5.4 need not include anything evidenced by the Register kept under the Real Property Act 1900.
- 25.6 In the case of land under old system title -
 25.6.1 in this contract 'transfer' means conveyance;
 25.6.2 the purchaser does not have to *serve* the form of transfer until after the vendor has *served* a proper abstract of title; and
 25.6.3 each vendor must give proper covenants for title as regards that vendor's interest.
- 25.7 In the case of land under limited title but not under qualified title -
 25.7.1 *normally*, the abstract of title need not include any document which does not show the location, area or dimensions of the land (for example, by including a metes and bounds description or a plan of the land);
 25.7.2 clause 25.7.1 does not apply to a document which is the good root of title; and
 25.7.3 the vendor does not have to provide an abstract if this contract contains a delimitation plan (whether in registrable form or not).
- 25.8 The vendor must give a proper covenant to produce where relevant.
- 25.9 The vendor does not have to produce or covenant to produce a document that is not in the possession of the vendor or a mortgagee.
- 25.10 If the vendor is unable to produce an original document in the chain of title, the purchaser will accept a photocopy from the Registrar General of the registration copy of that document.

26 Crown purchase money

- 26.1 This clause applies only if purchase money is payable to the Crown, whether or not due for payment.
- 26.2 The vendor is liable for the money, except to the extent this contract says the purchaser is liable for it.
- 26.3 To the extent the vendor is liable for it, the vendor is liable for any interest until completion.
- 26.4 To the extent the purchaser is liable for it, the *parties* must adjust any interest under clause 14.1.

27 Consent to transfer

- 27.1 This clause applies only if the land (or part of it) is restricted title land (land that cannot be transferred without consent under *legislation*).
- 27.2 The purchaser must properly complete and then *serve* the purchaser's part of an application for consent to transfer of the land (or part of it) *within 7 days* after the contract date.
- 27.3 The vendor must apply for consent *within 7 days* after *service* of the purchaser's part.
- 27.4 If consent is refused, either *party* can *rescind*.
- 27.5 If consent is given subject to one or more conditions that will substantially disadvantage a *party*, then that *party* can *rescind within 7 days* after receipt by or *service* upon the *party* of written notice of the conditions.
- 27.6 If consent is not given or refused -
 27.6.1 *within 42 days* after the purchaser *serves* the purchaser's part of the application, the purchaser can *rescind*;
 or
 27.6.2 *within 30 days* after the application is made, either *party* can *rescind*.
- 27.7 If the *legislation* is the Western Lands Act 1901 each period in clause 27.6 becomes 90 days.
- 27.8 If the land or part is described as a lot in an unregistered plan, each time in clause 27.6 becomes the later of the time and 35 days after creation of a separate folio for the lot.
- 27.9 The completion date becomes the later of the completion date and 14 days after *service* of the notice granting consent to transfer.

28 Unregistered plan

- 28.1 This clause applies only if some of the land is described as a lot in an unregistered plan.
- 28.2 The vendor must do everything reasonable to have the plan registered *within 6 months* after the contract date, with or without any minor alteration to the plan or any document to be lodged with the plan validly required or made under *legislation*.

- 28.3 If the plan is not registered *within* that time and in that manner -
- 28.3.1 the purchaser can *rescind*; and
- 28.3.2 the vendor can *rescind*, but only if the vendor has complied with clause 28.2.
- 28.4 Either *party* can serve notice of the registration of the plan and every relevant lot and plan number.
- 28.5 The completion date becomes the later of the completion date and 21 days after *service* of the notice.
- 28.6 Clauses 28.2 and 28.3 apply to a plan that is to be registered before the plan is registered.
- 29 Conditional contract**
- 29.1 This clause applies only if a provision says this contract or completion is conditional on an event.
- 29.2 If the time for the event to happen is not stated, the time is 42 days after the contract date.
- 29.3 If this contract says the provision is for the benefit of a *party*, then it benefits only that *party*.
- 29.4 If anything is necessary to make the event happen, each *party* must do whatever is reasonably necessary to cause the event to happen.
- 29.5 A *party* can *rescind* under this clause only if the *party* has substantially complied with clause 29.4.
- 29.6 If the event involves an approval and the approval is given subject to a condition that will substantially disadvantage a *party* who has the benefit of the provision, the *party* can *rescind within 7 days* after either *party serves* notice of the condition.
- 29.7 If the *parties* can lawfully complete without the event happening -
- 29.7.1 if the event does not happen *within* the time for it to happen, a *party* who has the benefit of the provision can *rescind within 7 days* after the end of that time;
- 29.7.2 if the event involves an approval and an application for the approval is refused, a *party* who has the benefit of the provision can *rescind within 7 days* after either *party serves* notice of the refusal;
- 29.7.3 the completion date becomes the later of the completion date and 21 days after the earliest of -
- either *party serving* notice of the event happening;
 - every *party* who has the benefit of the provision *serving* notice waiving the provision;
 - the end of the time for the event to happen.
- 29.8 If the *parties* cannot lawfully complete without the event happening -
- 29.8.1 if the event does not happen *within* the time for it to happen, either *party* can *rescind*;
- 29.8.2 if the event involves an approval and an application for the approval is refused, either *party* can *rescind*;
- 29.8.3 the completion date becomes the later of the completion date and 21 days after either *party serves* notice of the event happening.
- 29.9 A *party* cannot *rescind* under clauses 29.7 or 29.8 after the event happens.

EXHIBIT "KD - 5"

COURT DETAILS

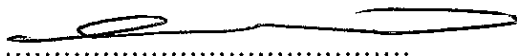
Court Supreme Court of New South Wales
 Division Equity Division
 List
 Registry Sydney
 Case number

TITLE OF PROCEEDINGS

First plaintiff **Perpetual Limited, formerly known as Perpetual Trustees Australia Limited**
[ACN 000 431 827]
 Number of plaintiffs 1
 First defendant **Fiona Caroline Cristian**
 Number of defendants 1

This is the exhibit marked "KD-5" referred to in the affidavit of Kylie Davies sworn before me

on 6 June 2007.



 Solicitor / ~~Justice of the Peace~~

Gary Koning

From: Love For Life Campaign [action@loveforlife.com.au]
Sent: Friday, 1 June 2007 12:23 PM
To: Gerard Breen; Gary Koning; action@loveforlife.com.au; iconnor@mcwlaw.com.au; Paul Kean
Subject: Update: Fiona Cristian vs Perpetual Limited/Macquarie Bank - Caveat on 40 Warrain Crescent Currarong

Attachments: Title Deed 31st May 2007 .pdf



Title Deed 31st May
2007 .pdf ...

Dear Gary, Gerard, Ian & Paul

See Attachment
See you in court
Regards
Arthur & Fiona Cristian

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>



TITLE SEARCH

Computer Folio Certificate issued under
Section 96D of the Real Property Act 1900

Department of Lands

No. 03

Search certified to:

31/5/2007 2:49 PM

COMPUTER FOLIO REFERENCE	
54/755903	
EDITION No. & DATE OF CURRENT CERTIFICATE OF TITLE	
7	4/10/2005

LAND

LOT 54 IN DEPOSITED PLAN 755903
 AT CURRARONG
 LOCAL GOVERNMENT AREA SHOALHAVEN
 PARISH OF BEECROFT COUNTY OF ST VINCENT
 (FORMERLY KNOWN AS PORTION 54)
 TITLE DIAGRAM CROWN PLAN 3961.2013

FIRST SCHEDULE

FIONA CAROLINE CRISTIAN (T AB400105)

SECOND SCHEDULE (5 NOTIFICATIONS)

-
- 1 LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)
 - 2 EXCEPTING LAND BELOW A DEPTH FROM THE SURFACE OF 15.24 METRES
 - 3 AB812274 MORTGAGE TO PERPETUAL LIMITED
 - * 4 AC737491 CAVEAT BY SALVATORE MACEDONE, DONAL JOHN MINEHAN, IAN GARY O'CONNOR, JONATHON CRAIG PROWSE & KYLIE ANNE HOLMES
 - * 5 AD156816 CAVEAT BY FIONA CAROLINE CRISTIAN

NOTATIONS

UNREGISTERED DEALINGS: LX AD132374.

*** END OF SEARCH ***

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PRINTED ON 31/5/2007 03

The Registrar General certifies that at the date and time specified above the person(s) described in the First Schedule was the registered proprietor of an estate in fee simple (or other such estate or interest set out in the Schedule) in the land described, subject to any exceptions, encumbrances, interests, and entries which appear in the Second Schedule.

* ANY ENTRIES PRECEDED BY AN ASTERISK DO NOT APPEAR ON THE CURRENT EDITION OF THE CERTIFICATE OF TITLE
 WARNING: THE INFORMATION APPEARING UNDER NOTATIONS HAS NOT BEEN FORMALLY RECORDED IN THE REGISTER.



Registrar General

Form: 08X
Licence: 98M111
Edition: 0612

CAVEAT

Prohibiting Recording of a Dealing
or Granting of a Possessory Appl.
New South Wales

AD156816A

Section 74F Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) LAND

If the claim relates to less than the whole of the land in the folio of the Register, a description of the part or premises affected, consistent with the claim set out on page 2 of this form and in the terms specified by Schedule 3 of the Real Property Regulation 1998, is required.

Torrens Title
54/755903

(B) REGISTERED DEALING

PCC

Number 54/755903 <i>PCC</i>	Torrens Title
----------------------------------------------	---------------

(C) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and LLPN if any FIONA CRISTIAN CAROLINE CRISTIAN 11 ROYCROFT ST, BOWRAL, NSW 2576 Reference (optional):	CODE X
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(D) REGISTERED PROPRIETOR

PCC

Show only the registered proprietor(s) against whom the claim is made: insert the full name and address

FIONA ~~CRISTIAN~~ CAROLINE CRISTIAN
11 ROYCROFT STREET
BOWRAL
NSW
Postcode: 2576

(E) CAVEATOR

PCC

Insert the full name and residential address

FIONA ~~CRISTIAN~~ CAROLINE CRISTIAN
11 ROYCROFT STREET
BOWRAL NSW
Postcode: 2576

(F) ADDRESS IN NEW SOUTH WALES FOR SERVICE OF NOTICES ON THE CAVEATOR

PCC

This must be a street address. If desired, a Document Exchange box in NSW may be provided in addition.

Street Address:
FIONA ~~CRISTIAN~~ CAROLINE CRISTIAN
11 ROYCROFT ST
BOWRAL NSW
Postcode: 2576

Document Exchange Box in NSW (additional):

Note: if the caveator's name or address for service of notices changes, the Department of Lands, Land and Property Information Division, must be notified on form 08CX.

(G) ACTION PROHIBITED

List by number only the items in Schedule 2 prohibited by this caveat 1, 4, 5.

(H) The caveator claims to be entitled to the estate or interest specified in Schedule 1 in the above land / registered dealing by virtue of the instrument / facts set out in that schedule and prohibits the Registrar General from taking, with respect to the land / registered dealing, the action specified above unless the caveator has consented in writing or this caveat has lapsed or been withdrawn.

WARNING: care should be exercised in completing a caveat form. An insupportable caveat may be challenged in the Supreme Court; damages may be awarded for lodging a caveat without justification; and penalties could be imposed for a breach of the Oaths Act 1900 and section 117 of the Real Property Act 1900. Furthermore failure to observe the requirements of section 117 of the Real Property Act 1900 and regulations 7 and 8 of the Real Property Regulation 1998 may make the caveat invalid.

(I) SCHEDULE 1 Estate or interest claimed

Nature of the estate or interest in the land/registered dealing		
I am registered owner of the property and I claim an interest on it		
By virtue of the instrument referred to below		
Nature of Instrument	Date	Parties
54/755903	4.10.05 31.05.07 fcc.	FIONA CRISTIAN PERPETUAL LTD. MACQUARIE MORTGAGES
By virtue of the facts stated below		
I am the registered owner of the property at present, and I have legal proceedings in relation to the property.		

(J) SCHEDULE 2 Action prohibited by this caveat

- The recording in the Register of any dealing other than a plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
- The registration or recording of any plan other than a delimitation plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
- The registration of delimitation plan¹ No.
- The granting of any possessory application² with respect to the land referred to above.
- The recording in the register of any dealing affecting the estate or interest of which the caveator is registered proprietor.
- The granting of an application to extinguish the restrictive covenant / easement created by dealing / deposited plan No.

(K) STATUTORY DECLARATION³

I, FIONA CATHERINE CRISTIAN solemnly and sincerely declare that—

- To the best of my knowledge, information and belief the caveator has a good and valid claim to the estate or interest set out in Schedule 1.
- This caveat does not require the leave of the Supreme Court or the endorsed consent of the registered proprietor / possessory applicant; and
- This caveat is certified correct for the purposes of the Real Property Act 1900.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900. Made and subscribed at Sydney in the State of NSW on 31/5/07 in the presence of—

Signature of witness: [Signature] Signature of declarant: Fiona Cristie

Name of witness: Marie Colosi Capacity of declarant if other than the caveator:

Address of witness: Justice of the Peace in the State of N.S.W. 184 Phillip St Sydney 2000

Qualification of witness: Justice of the Peace Practising Solicitor Other [specify]

(L) CONSENT OF THE REGISTERED PROPRIETOR of the estate or interest affected by the caveat (section 74F Real Property Act 1900)

I, the registered proprietor named at letter (D), for the purposes of section 74F(6) Real Property Act 1900 only, consent to this caveat.

Signature of registered proprietor

- A plan defining the boundaries of land in a limited folio of the Register. See Part IVB Real Property Act 1900.
- An application made by a person claiming title to land by virtue of adverse possession. See Part VIA Real Property Act 1900.
- As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment at Land and Property Information Division.

EXHIBIT "KD - 7"

COURT DETAILS

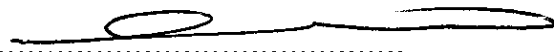
Court Supreme Court of New South Wales
Division Equity Division
List
Registry Sydney
Case number

TITLE OF PROCEEDINGS

First plaintiff **Perpetual Limited, formerly known as Perpetual Trustees Australia Limited**
[ACN 000 431 827]
Number of plaintiffs 1
First defendant **Fiona Caroline Cristian**
Number of defendants 1

This is the exhibit marked "KD-7" referred to in the affidavit of Kylie Davies sworn before me

on 6 June 2007.


.....
Solicitor / Justice of the Peace

Gary Koning

From: Gary Koning
Sent: Monday, 4 June 2007 6:17 PM
To: 'Love For Life Campaign'
Subject: Perpetual Limited & Cristian

Attachments: LtrCristian.pdf



LtrCristian.pdf (54
KB)

Dear Mrs Cristian

Please see attached letter.

Regards

-----Original Message-----

From: Love For Life Campaign [mailto:action@loveforlife.com.au]
Sent: Friday, 1 June 2007 12:23 PM
To: Gerard Breen; Gary Koning; action@loveforlife.com.au; iconnor@mcwlaw.com.au; Paul Kean
Subject: Update: Fiona Cristian vs Perpetual Limited/Macquarie Bank - Caveat on 40 Warrain Crescent Currarong

Dear Gary, Gerard, Ian & Paul
See Attachment
See you in court
Regards
Arthur & Fiona Cristian

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

Level 8 Angel Place 123 Pitt Street Sydney NSW 2000
 GPO Box 983 Sydney NSW 2001 DX 101 Sydney
 Tel 61 2 8233 9500 Fax 61 2 8233 9555
 www.daslaw.com.au

4 June 2007

Mrs Fiona Cristian
 11 Roycroft Street
 BOWRAL NSW 2576



DIBBS ABBOTT STILLMAN | LAWYERS

Also by Facsimile and Email: (02) 4861 1113 and action@loveforlife.com.au

Dear Mrs Cristian

**PERPETUAL LIMITED –V- FIONA CRISTIAN
 SUPREME COURT PROCEEDINGS NUMBER 13403/2006
 Our Ref: JAB/GTB/3301650**

We refer to your email of Friday 1 June 2007.

We note you have lodged a caveat over the property at 40 Warrain Crescent, Currarong, folio identifier 54/755903 ("the Property"). The caveat you have lodged has been registered and given dealing number AD156816 ("the Caveat").

Our client, Perpetual Limited, obtained a judgment from the Supreme Court of New South Wales on 15 November 2006 for possession of the Property ("the Judgment"). The Judgment was based on your failure to make a single loan repayment since being advanced \$664,000 from our client, to refinance the Property, in September 2005.

Your application to the Court of Appeal for leave to appeal the Judgment was refused on 2 April 2007.

Pursuant to the Judgment and its rights as mortgagee of the Property, our client has sold the Property, with settlement of the sale scheduled to take place on Tuesday 12 June 2007. The Caveat will delay settlement of the sale.

In the Caveat you state that your interest in the Property is based on the fact that you are the "registered owner of the property at present, and I have legal proceedings in relation to the property".

In view of the Judgment and the decision of the Court of Appeal, you have no basis to lodge the Caveat or otherwise prevent our client in the exercise of its power of sale over the Property.

Please provide your confirmation, by 5pm tomorrow, 5 June 2007 that you will withdraw the Caveat, by providing to our office, by 5pm Wednesday 6 June 2007, an executed Withdrawal of Caveat, in registrable form.

In the event that we do not receive your confirmation we will approach the Supreme Court for urgent orders to remove the caveat. In view of the history of these proceedings, the Judgment and the order of the Court of Appeal, we will also request costs on an indemnity basis.

801565 v1 SYDNEY 26 03 07

Melbourne
 T 61 3 8080 3500
 F 61 3 8080 3599

Brisbane
 T 61 7 3100 5000
 F 61 7 3100 5001

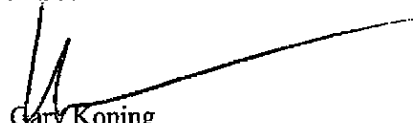
Canberra
 T 61 2 6201 7222
 F 61 2 6257 4011

Perth
 T 61 8 9265 6000
 F 61 8 9265 6099

The Dibbs Abbott Stillman Legal Group is a national association of independent law firms each trading as Dibbs Abbott Stillman.

In the event that you wish to be heard in the Supreme Court on an application by our client to remove the caveat, we can indicate to you that we anticipate approaching the Duty Judge on Thursday 7 June 2007. The writer may be contacted on the below number to provide you with details of the precise time when the approach to the Court will be made.

Yours faithfully
Dibbs Abbott Stillman



Gary Koning
Senior Associate
Email: gary.koning@daslaw.com.au
Direct Line: 61 2 8233 9789

Partner Responsible: Gerard Breen