

BLP BRIEF

Pin Oak Holdings Pty Ltd v Risi Pty Ltd
[2016] VSC 773: Retail Leases and Equitable Relief

17 February 2017

By Tyson Brennan

The Supreme Court of Victoria recently overturned a decision of the Victorian Civil and Administrative Tribunal (VCAT) regarding the equitable remedy arising from a commercial tenant undertaking renovation works to the leased premises shortly before the landlord terminated the lease.

The Facts

The dispute arose between Pin Oak Holdings Pty Ltd (POH) and Risi Pty Ltd (Risi) following POH's notice to Risi to vacate the premises shortly after Risi had spent \$114,613.36 on renovations.

POH is the landlord of a commercial premises which was leased by Risi for the purposes of operating a restaurant. Risi commenced leasing the premises in 2002. Having exercised options to renew, Risi's lease was to expire in November 2017. During the final term of the lease, Risi sought to sell the restaurant business and execute a new lease with POH, providing for a new three year lease (to expire on 1 November 2017) with two further options for renewal. To that end, Risi and POH

engaged in discussions regarding the new lease. Risi alleged that:

- Emails and correspondence had been exchanged between each party agreeing to the terms of the new lease;
- Risi had signed the lease documents and had provided them to POH's solicitor for execution (but POH had not signed and returned the counterpart)

Relying on the understanding that a new lease had, or would be, entered into, Risi undertook renovations to the premises at a cost of \$114,613.36.

Subsequently, after the renovations had been completed, POH gave notice to Risi to vacate the premises on the basis that no formal lease had been entered into and that Risi was now a monthly tenant.

Risi opposed the vacation notice and alleged that it was entitled to the new three year lease, together with 2 options to renew, based on dealings between it and POH prior to Risi undertaking the

renovations. POH argued that the notice it gave to Risi to vacate the premises was valid.

It was determined by VCAT that the new lease proposed by Risi had not been formalised (by the proper execution of the lease documents) and could therefore not be enforced against POH.

Accordingly, Risi argued that it was entitled to equitable relief requiring POH to enter into a lease on the same terms and conditions that were agreed upon by reason of the fact that:

- POH was aware of, and in possession of, the proposed new lease;
- POH had, by email, accepted the terms of the new lease;
- POH was aware that Risi was to undertake significant renovations to the premises and was doing so in reliance of the representations made by POH about the new lease;
- Risi was required to close the restaurant and forego income during the renovations, and had suffered detriment in doing so based on the representations by POH.

At the hearing, VCAT determined that Risi was entitled to the equitable relief sought on the basis that POH had created an unconscionable situation whereby Risi relied on the agreement regarding the new lease when in fact it was not POH's intention to honour it. VCAT ordered that POH grant the new lease on the terms set out in the email correspondence.

POH appealed the VCAT decision to the Supreme Court pursuant to s148 of the *VCAT Act*. POH alleged that VCAT's findings

were not supported by the evidence that was given by the parties during the hearing, particularly that:

- VCAT determined that the restaurant was closed between March and August 2015 when in fact the evidence suggested that it was closed only for a period of 4 weeks between June and July of 2015;
- VCAT determined that it was apparent to POH that the renovations (and the cost) was substantial when in fact the evidence suggested that POH knew little of the extent of the renovations;
- VCAT determined that Risi had foregone the opportunity to establish a business elsewhere;
- VCAT had gone beyond the 'minimum equity' required to put Risi back into the position it would have been but for it having undertaken the renovations on the mistaken assumption that it had formally entered into a new lease.

Minimum Equity

Equitable remedies intervene to relieve against consequences when it would otherwise be unfair in the circumstances to allow another party (in this case, POH) to take advantage or benefit from a situation caused (at least in part) by its actions.

The minimum equity doctrine exists to limit equitable relief to an outcome which addresses and ameliorates the unconscionability, but no more.

In this matter, POH argued that VCAT's order to execute and give effect to the new lease went beyond the requirements to remedy the situation. POH argued that Risi should only be entitled to recover the costs of the renovations.

The Decision

The Supreme Court upheld POH's appeal. It held that the VCAT decision was erroneous, having been made based on findings about the renovations, the closure of the restaurant and the knowledge of those circumstances held by POH that were not supported by the evidence presented.

The Supreme Court also stated that the orders made by VCAT were manifestly excessive, stating that:

"...the Respondent's detrimental reliance could have been entirely ameliorated by an appropriate award of equitable compensation and interest which...reflects the extent of the detriment suffered." [at 59]

Despite the Supreme Court overturning the VCAT decision, it did confirm that Risi ought to be entitled to equitable relief based on the unconscionability created by POH with respect to the renovations and subsequent termination of the lease.

The Supreme Court stated that the appropriate equitable remedy in the situation was that the POH repay Risi the money it had spent on renovating the premises.

The Implications

The Supreme Court decision in this matter is a strong reminder to all parties to a commercial lease that commercial leases must be in writing to be enforceable.

Equity will not give rise to a lease in the absence of formally executed documents.

By extension, tenants of commercial properties should not proceed with any alterations to the premises unless they have the backing of a properly executed commercial lease.

The decision also reiterates that equitable relief exists only to make good the unconscionability of a situation, and no more. Equity will not go further than this and will not confer any disproportionate advantage on the party which suffered the detriment.

How can Brennan Law Partners assist?

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- Lease negotiations
- Lease agreements and documentation
- Documenting and negotiating your corporate and commercial agreements
- Disputes arising under a commercial lease

If you have any questions regarding any information in this BLP Brief, we welcome you to contact us at any time.



Tyson Brennan
Principal

tyson.brennan@brennanlawpartners.com.au
0478 166 284